Intercity Passenger Rail Competitive Bidding and Service Options Study

Part I: Background Information
And
Part II: Evaluation and Recommendations Under the Current Environment

A Report To

California Department of Transportation

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Intercity Passenger Rail Competitive Bidding and Service Options Study

Part I: Background Information

Foreword

This report is the first report in a series of four reports entitled *Intercity Passenger Rail Competitive Bidding and Service Options Study* that was awarded by the California Department of Transportation as Caltrans Agreements 75A0179 with Notice to Proceed given on April 2, 2003.

This report, Part I, provides background information on Intercity Passenger Rail. Part II will provide an evaluation and recommendations for intercity passenger service under the current environment. Part III was to provide an evaluation and recommendations for intercity passenger service under a changed environment. Part IV was to combine the prior three reports into a single comprehensive document.

At this time the Department has elected not to proceed with completing Part III and IV of the series due to (1) Amtrak's apparent improved stability and future survival prospects and (2) the Department's current funding authorization.

Thus, the findings and conclusions in Parts I and II do not reflect the entirety of the original scope of work.

California Passenger Study

Part I: Background Information

Report Contents
Amtrak Responsibilities

I. Executive Summary

The State of California first sponsored intercity rail passenger service in 1976 when the California Department of Transportation entered into a contract with the National Railroad Passenger Corporation, also known as Amtrak, to provide one State-supported round-trip train per day between Los Angeles and San Diego under the provisions of the original but now defunct 403(b) program. Today, 30 round-trips over three different routes are being operated with State support. Those trains operate between San Diego, Los Angeles and San Luis Obispo (*Pacific Surfliner* service), between Bakersfield and Oakland and Bakersfield and Sacramento (*San Joaquin* service), and between San Jose, Oakland, Sacramento and Auburn (*Capitol Corridor* service). The rail passenger service on those three routes is supported by an extensive network of connecting motor coaches. California currently provides $73 million in annual operating funds to intrastate intercity rail service. This is in addition to over $2.7 billion in capital funding invested by the State and its partners from 1977 through 2004 for capital projects including: stations, track and signal, rolling stock and maintenance facilities.

At the present time, Amtrak suffers from uncertain financial and institutional prospects and it is timely to evaluate whether the present arrangements between Amtrak and the State, which are to some extent an outgrowth of the original 403(b) program, are still appropriate. With passage of the Amtrak Reform and Accountability Act of 1997 (PL 105-134), it is now possible to consider a competitive procurement process covering some or all service functions that could lead to more cost-efficient arrangements with new providers or even with Amtrak. The need to conduct such an evaluation is even more timely given that in 2003-04 Amtrak began charging

state-supported services on the basis of full recovery of direct costs, where states pay all direct costs and Amtrak covers all fixed costs.

Under the Consolidated Appropriations Act of 2004 Amtrak has received funding which Amtrak asserts is adequate for operations, but will not provide sufficient funds to complete the rebuilding of its physical plant and equipment planned for FFY 04 in their five-year strategic plan. Section 151 of the Act is particularly relevant to California since it provides state-supported intercity passenger rail services with the ability to obtain access to Amtrak's facilities if a state decides to utilize a non-Amtrak operator to provide service for a route. This includes provisions which allow a state sponsor to utilize Amtrak owned or leased equipment and facilities by negotiating an agreement with Amtrak or, if unable to reach an agreement with Amtrak, to have the Secretary of Transportation to set terms for their use.

Amtrak operates the *Pacific Surfliner* and *San Joaquin* intercity rail passenger services in California under contracts between the State and Amtrak and operates the *Capitol Corridor* service pursuant to an agreement between Amtrak and the Capitol Corridor Joint Powers Authority. These services all utilize the tracks and other operating facilities that are generally owned by freight railroads and public agencies and access these facilities as a result of agreements between Amtrak and those entities. Amtrak is the only entity which possesses the statutory authority to access the facilities of any rail carrier or regional transportation authority to provide intercity passenger service. Under these contracts Amtrak operates trains, undertakes routine equipment maintenance, performs general and administrative tasks, contracts with bus operators for complimentary intercity bus service and provides liability insurance coverage. Tables 3, 4 and 5 describe the functions performed by Amtrak for each of the California sponsored intercity services.

Amtrak relies upon a combination of legal rights, contractual responsibilities and tangible facilities and resources to operate service in California. As opposed to other contractors, Amtrak retains both statutory and competitive advantages and disadvantages as an intercity rail passenger service operator. The three primary statutory-based advantages are: 1) ability to access rights-of-way and other fixed facilities owned by freight railroads; 2) ability to pay for that access on an incremental cost basis; and 3) dispatching priority. Disadvantages may include overhead cost structure, bureaucracy, restrictive labor agreements and image.

II. Development of Intercity Passenger Rail Service in California

California began sponsoring intercity rail passenger service in 1976 when the State Department of Transportation (Department) entered into a contract with Amtrak to provide one State-supported round-trip per day between Los Angeles and San Diego. With Amtrak already operating three round-trips daily in the corridor, service initially was increased by a third. That service was the precursor to the 30 trips currently being operated with State support. Those trains operate between San Diego, Los Angeles and San Luis Obispo (*Pacific Surfliner* service), between Bakersfield and Oakland and Bakersfield and Sacramento (*San Joaquin* service) and San Jose, Oakland, Sacramento and Auburn (*Capitol Corridor* service). The service on the three routes is supported by an extensive network of connecting motor coaches, which allow the State to further penetrate the travel market to areas of the State not directly served by train service. The evolution of the service rests on a substantial State investment in private railroad infrastructure, emergence of different institutional frameworks for providing local input to both the State and Amtrak and the creation of a State funding structure that transformed the rail service into a permanent feature of California's surface transportation system. The development of commuter rail services in the State's three regions (Bay Area, and Los Angeles and San Diego regions), in part, was built on the California intercity rail experience of contracting with Amtrak and financing railroad infrastructure improvements.

Development of the State-Supported Intercity Passenger Rail Service

The State-supported Amtrak service grew incrementally. Initial service in the *Pacific Surfliner* Corridor (San Diego to Los Angeles) grew from a single round-trip to 11 round-trips today. In 1988 the first round-trip was added from Los Angeles to Santa Barbara, and today there are four round-trips to Santa Barbara with one continuing to San Luis Obispo. On this route California shares the net operating loss with Amtrak. The State's share is 67 percent. The *Surfliner* is the second most heavily patronized service offered by Amtrak next to the Northeast Corridor (NEC) service operating between Washington, New York and Boston. However, the *Surfliners* are a joint venture between California and Amtrak whereas NEC service is deemed part of the Amtrak national system. This is an important distinction. The NEC is a corporate enterprise of Amtrak. As such, the decisions pertaining to service and infrastructure investments are made within Amtrak. On the other hand, California must pursue Amtrak service improvements through contract negotiations with Amtrak. In addition, improvements to the infrastructure must

be pursued through negotiations with the railroads owning the rights-of-way over which the state supported services operate. Consequently, the service development environment in which the Department must pursue its mission of providing Californians high quality passenger rail services is complex and lengthy.

In 1979, the Department contracted for one daily round-trip between Oakland and Bakersfield when Amtrak reconfigured its national system and announced it was discontinuing its *San Joaquin* round-trip. A strong desire in the San Joaquin Valley to continue the service led to the State's decision to support the train. Today, six *San Joaquins* are operated by Amtrak and funded by California. Four round-trips operate from Bakersfield to Oakland and two round-trips operate from Bakersfield to Sacramento. The *San Joaquins* have the most extensive connecting motor coach service of the three State-supported routes.

The last corridor to enjoy State-supported service is the *Capitol Corridor,* which began operating in 1991. Initially, the service was administered by the State, but in 1998, administration of the service was transferred to the Capitol Corridor Joint Powers Authority (CCJPA), a regional joint powers authority. The State continues to fund the service. The service is operated – San Jose, Oakland, Sacramento and Auburn, with twelve weekday round-trips per day between Oakland and Sacramento.

During the period 1977 through 2004, 54 percent of the total investment in capital improvement necessary to support the State-contracted services has been committed to track and signal systems. Rolling stock, passenger cars and locomotives have been the second largest category of expenditure constituting 21 percent. The development of stations, including the construction of new and the rehabilitation of existing facilities, received 19 percent of capital outlay funds.

Intercity rail passenger service did not evolve in a vacuum. Each corridor has been studied extensively and those studies forecasted demand for service and the capability of the subject corridors to host additional passenger trains in light of current and estimated future freight traffic. Such information was translated into capital programs that involved infrastructure improvements to track and signal systems in order to carry forecasted demand and to improve operating times, reliability and safety. In addition, the feasibility and cost of additional stations were also analyzed. Table 1 summarizes the $2.7 billion in improvements by system element that the State and its partners have made in intercity rail passenger service since 1997.

Table 1

Summary of Intercity Rail Project Investment
1977-2003
($'s in millions)

Route	Stations	Track and Signal	Maintenance & Layover Facilities	Rolling Stock	Total
Surfliner					
Los Angeles - San Luis Obispo	$ 104.2	$ 238.8			$ 343.0
San Diego - Los Angeles	137.7	670.7			808.4
Total *Surfliner*	241.9	909.5			1,151.4
San Joaquin	157.1	358.9			516.0
Capitol Corridor	81.7	187.2			268.9
Other Projects	43.0	24.4			67.4
Maintenance & Layover Facilities			$146.4		146.4
Rolling Stock				$583.5	583.5
Total	$523.7	$1,480.1	$146.4	$583.5	$2,733.6
Percent of Total	19.2%	54.1%	5.4%	21.3%	100.0%

Note: Totals may not add due to rounding.

Source: California Intercity Rail Capital Program March 2004

Table 2 summarizes the source of funds used to finance infrastructure improvements. As can be seen from a review of Table 2, California has financed 64 percent of the infrastructure investments associated with the intercity rail passenger service. California's partner, Amtrak, contributed 16 percent of the investment while the host railroads, the third party to the services, funded four percent of the investments. Local contributions and Federal Transit Administration (FTA) accounted for a combined 16 percent of the funding.

Table 2

Summary of Intercity Rail Project Investment Funding by Source 1977-2003 ($'s in millions)

Route	State	Amtrak	Federal	Local	Railroad	Other	Total
Pacific Surfliner							
Los Angeles - San Luis Obispo	$ 230.6	$ 3.7	$ 20.1	$ 88.1	$ 0.5	$ 0.0	$ 343.0
San Diego - Los Angeles	524.0	17.7	143.4	103.6	7.2	12.5	808.4
Total *Surfliner*	754.6	21.4	163.5	191.7	7.7	12.5	1,151.4
San Joaquin	403.6	2.6	22.3	26.0	59.8	1.7	516.0
Capitol Corridor	197.8	1.2	26.3	22.7	20.9	0.0	268.9
Other Projects	30.3	3.0	19.6	8.4	6.1	0.0	67.4
Maintenance & Layover Facilities	82.8	63.5	0.0	0.1	0.0	0.0	146.4
Rolling Stock	278.1	299.0	0.1	0.0	0.0	6.3	583.5
Total	$1,747.2	$390.7	$231.8	$249.0	$94.5	$20.5	$2,733.6
Percent of Total	63.9%	14.3%	8.5%	9.1%	3.5%	0.7%	100.0%

Note: Totals may not add due to rounding.

Source: California Intercity Rail Capital Program March 2004

Forty-two percent of the investment was made in the corridor through which the *Surfliner* operates. The acquisition of rolling stock absorbed 21 percent of expenditures. The San Joaquin Corridor received 18 percent of the capital invested while the Capitol Corridor benefited from a ten percent share of total investment. It is important to note that service in the Capitol Corridor began fifteen years after *Surfliner* service was inaugurated. Five percent of capital expenditures went to maintenance facility and layover facilities, and two percent to other projects.

Structure of Intercity Passenger Rail Service State Funding

California has been able to pay for capital improvements and operations for State-supported service because the State has developed a structure of funding mass transportation services, including intercity passenger service. The funding of intercity rail service operations is overwhelmingly based on a flow of certain sales tax revenues from the retail sale of motor vehicle fuels. Capital investments have been funded from a variety of sources including: the State Highway Account, bond funds, Public Transportation Account, and the relatively new Traffic Congestion Relief Fund.

Public Transportation Account

The Public Transportation Account (PTA) is the primary source of operations funding for the intercity rail program revenue. The PTA is designated as a trust fund to be used only for transportation planning and mass transportation purposes. Revenues in the PTA flow from several sources. A main source of revenue is the entire amount derived from a 4.75 percent sales tax on the retail price of diesel fuel. (Revenue derived from diesel fuel used in agriculture is not included, as it is rebated.) A second source of revenue is derived from a 4.75 percent sales tax levied on nine cents of the eighteen cents per gallon state gasoline tax. The last major source of PTA revenue is the balance in the State Highway Account that is not gas tax revenue. Those revenues, which are deposited in the PTA, are typically derived from the sale of documents, sale or rental of state property and other similar transactions.

Once in the PTA, 50 percent of the fuel tax revenue is allocated to regional agencies and local transit operators under the State Transit Assistance Program. The amount remaining in the PTA is allocated to state transportation programs including intercity rail operating support, rail, mass transit and planning staff, and a number of smaller programs. The PTA can also be used for intercity rail capital projects if funds are available.

State Highway Account

The bulk of the State Highway Account (SHA) supports the State's highway system, but a portion of the account also supports rail projects. Revenues are derived from the gas and diesel fuel taxes, truck weight fees, Federal funds and other miscellaneous revenues. Under Article XIX of the State Constitution, SHA funds may be used to build or improve rail transit infrastructure but not on rolling stock nor to fund rail operations. The 1989 Blueprint Legislation allowed intercity rail to receive more funding from the SHA.

Bond Funds

The intercity rail passenger program has benefited from the passage of two bond measures in 1990. Proposition 108 was a $1 billion bond issue to fund mass transit programs. The intercity passenger program received $218 million for capital projects from that source. Proposition 116 was a $2 billion bond fund for mass transportation projects. $466 million has gone towards intercity capital projects and the remainder for urban and commuter rail and transit and transit related projects. That latter category was the source of revenue that enabled public agencies in Southern California to purchase the right-of-way over which *Metrolink* operates. Little revenues from those two measures remain to be allocated to intercity rail passenger purposes.

Traffic Congestion Relief Program

Chapter 91, Statues of 2000, established the Governor's Traffic Congestion Relief Program (TCRP) to be funded from the Traffic Congestion Relief Fund (TCRF). (Chapter 113, statues of 2001 made some changes to the Program.) The TCRF was appropriated $1.5 billion from the General Fund and $500,000 from sales tax on motor vehicle fuel for a total of $2.0 billion in 2000-01 Fiscal years. Additionally gas sales tax revenues were to be transferred starting in 2003-04 through 2006-07 for a total of $3.314 billion. (Proposition 42 added Article XIXB to the California Constitution in March 2002 that makes the gas sales tax revenue transfer permanent.)

Almost immediately after the implementation of the TCRP the State began to experience budget deficits. As a result the program has not received all the funds it was projected to acquire. The TCRP includes $206.5 million for specific intercity rail capital projects. To date $40.9 million has been allocated to rail projects. Since December 2002, allocations of TCRP funds have been suspended. Currently the Governor's Proposed 2004-05 Budget would repeal the TCRP and eliminate special statutory status for projects identified in the TCRP.

Local Funds

Local funds have played an important role in funding station improvements. Local governments have funded such projects entirely with their funds or in combination with State and Federal revenues. Station investments have been important to serve patrons and to create or strengthen an affinity for rail service with communities through their stations.

Institutional Evolution

The State's administration of intercity rail service has been complemented by partnerships with local agencies in each corridor. Local agencies have organized into corridor entities, which have served as forums through which to articulate local support of services, provide local perspective on proposed service changes and capital investments and seek to influence State or Federal officials on behalf of specific service or facility needs. The corridor agencies have also been very involved in the service improvements studies on each corridor. There are three corridor entities, the Los Angeles-San Diego-San Luis Obispo Corridor Agency, the San Joaquin Valley Rail Committee and the Capitol Corridor Joint Powers Agency (CCJPA). Each corridor's institutional setting evolved differently because of development patterns, character of the travel markets, the size and experience of regional transportation entities and other similar metrics.

Senate Bill 457

This measure established a framework that allowed corridor agencies to assume responsibility to manage the passenger services operating in each corridor. It allows the Secretary of Business, Transportation and Housing to transfer the administrative control of intercity rail passenger service from the Department to a corridor agency. To date, only one corridor entity has taken advantage of the initial authorization, the CCJPA. However, SB 457 remains a framework to transfer responsibility to corridor agencies.

A transfer must be based on a finding by the Secretary that it would result in a reduction of administrative or operating costs. Upon making the finding, an interagency agreement between the Department and the corridor's joint powers agency transferring the administrative responsibility and operating revenues to the Agency may be consummated. The transfer also includes the funds to administer and market the service, and must include a description of the mutually agreed upon rail service. In addition, the agreement must specify how various administrative issues are addressed including the responsibility to meet any operating shortfalls, an operating contract oversight process, the level of rail infrastructure maintenance and the terms and conditions governing the transfer of equipment from the State to the corridor agency. Also, since the State-owned equipment is used in more than one corridor, the agreement must include a description of the impact of the transfer of equipment to a corridor agency on equipment availability in other corridors. Finally an important feature

of the law is that the Secretary must establish a uniform set of performance standards governing all corridors and operators which must be included in the agreement.

Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency

The Los Angeles-San Diego Rail Corridor Agency (LOSSAN) formed in 1989 as a joint powers authority in order to work with the Department on implementing the recommendations of the Los Angeles – San Diego State Rail Corridor Study (1987) and Study Group program for incremental upgrades on the corridor. The agency was represented by agencies in the three counties – Los Angeles, Orange and San Diego, along the corridor. LOSSAN has played an important role in identifying service improvements and station needs as well as assisting the Department in prioritizing capital investments in the corridor's railroad infrastructure.

With the passage of SB 457, the operation of the agency was put into abeyance during the period when the Southern California Intercity Rail Group was formed to determine the feasibility of transferring the operation of the *Surfliner* to a regional joint powers agency. The group included the original, three LOSSAN counties as well as Ventura, Santa Barbara, Imperial, Riverside and San Bernardino. After study, the group voted not to assume local operation of the corridor, and in 2000 dissolved as a separate entity.

In 2001, LOSSAN added the San Luis Obispo Council of Governments as a voting member and transferred the Ventura County Transportation Commission, the Santa Barbara County Association of Governments, and the San Diego Association of Governments from ex-officio members to voting members. The agency continues in its role as an advisory agency to the Department and Amtrak and as a force advocating improvements in the corridor.

San Joaquin Valley Rail Committee

The counties along the San Joaquin route have long been active in providing advice to the Department. In 1987, members of the Caltrans San Joaquin Task Force formed the Steering Committee of Caltrans Rail Task Force. The San Joaquin Valley Rail Committee was an outgrowth of the Task Force. The Committee's membership is drawn from the counties of Fresno, Kern, Kings, Los Angeles, Madera, Merced, Sacramento, San Joaquin, Stanislaus and Tulare. The Committee serves as an advisory group to the Department and Amtrak, advocating improvements to service and facilities. Under Section 14074.8 of the government Code, the Committee can confer

with the Secretary of the Business, Transportation and Housing Agency on issues related to the Corridor.

Capitol Corridor Joint Powers Authority

The CCJPA has the most formalized institutional arrangements, having taken advantage of the opportunity provided by SB 457 to manage the service operating between Auburn, Sacramento, Oakland and San Jose. The members of the CCJPA, include the Placer County Transportation Planning Agency, the Sacramento Regional Transit District, the San Francisco Bay Area Rapid Transit District (BART), the Santa Clara Valley Transportation Authority, the Solano County Transportation Authority and the Yolo County Transportation District.

The CCJPA has its origin in an advisory committee established in 1988 to oversee the preparation of a planning study. The committee was named the Assembly Concurrent Resolution 132 Policy Advisory Committee after the legislation creating the committee and authorizing the study. On the basis of the study, three round trips between Sacramento, Oakland and San Jose began operating in December, 1991. These trains were administered by the State.

With the enactment of SB 457, the CCJPA was created and the Bay Area Rapid Transit District (BART), operator of the rail mass transit system serving four of the San Francisco Bay Area's nine counties, was retained as CCJPA's administrative staff. The CCJPA is funded by the State through an interagency transfer agreement and a fund transfer agreement. The CCJPA contracts with Amtrak to operate service. The Business, Transportation and Housing Agency allocates State resources to the CCJPA for operations, administration and marketing. The Department oversees the contract between the CCJPA and the State.

Currently, twelve weekday round-trips operate between Sacramento and Oakland (nine on weekends), though the CCJPA's goal is to provide service at hourly headways from 6 a.m. to 10 p.m. by 2011. The CCJPA also plans to extend service across the Sierra Nevada Mountains to Reno, Nevada. The CCJPA has developed performance standards with respect to ridership, farebox recovery ratio and on-time performance as measures of cost efficiency. In addition, The CCJPA has a 25-year, $549 million capital improvement program and manages a service marketing plan.

On a day-to-day basis, CCJPA administrative responsibilities include the following activities:

- Oversee train operations as defined in its agreement with Amtrak, the operator of the service;
- Monitor and oversee the maintenance carried out by Amtrak of rolling stock assigned to the *Capitols* and the *San Joaquins* as that equipment is managed from a single pool (the Department contracts with CCJPA to perform this oversight function);
- Oversee the feeder bus service subcontracted by Amtrak to private operators;
- Work with the Union Pacific Railroad, the host railroad, and Amtrak on issues related to dispatching, project engineering and construction and other railroad-related issues.
- Administer the marketing plan.
- Plan and implement capital projects funded by the State and other local entities.
- Plan new services for the Corridor.

III. Reform Proposals and Related Reports

Numerous studies and reports conducted over the past several years attempted to identify Amtrak's problems at the national level and offered potential solutions. The reports covered a variety of issues but primarily focused on funding, quality of services and economic efficiency. Although the reports identified, evaluated and reached conclusions as to the reasons for Amtrak's condition, none of those reports convinced various administrations and congresses to make serious changes to Amtrak's structure. Instead Amtrak and the federal government covered increasing deficits with funding increases through the regularly scheduled funding process, as well as using other mechanisms, such as mortgaging fixed assets including passenger stations and the sale/lease back of other assets.

Amtrak Reform Council

Important recent work addressing the Amtrak situation was conducted by the Amtrak Reform Council (ARC), in response to Section 204 (c) (1) of the Amtrak Reform and Accountability Act of 1997, that required an action plan for a restructured and rationalized national intercity rail passenger system. The ARC did a series of studies that were completed in late 2001, and the Final Report titled Action Plan for the Restructuring and Rationalization of the National Intercity Rail Passenger System was issued on February 7, 2002.

Key findings of the initial studies were:

- Amtrak's losses in FY 2001 reached $341 million, failing the self-sufficiency, test as the test is defined by the Act;
- Amtrak's operating losses under Generally Accepted Accounting Principles reached $1.1 billion;
- Amtrak would not achieve operational self-sufficiency by December 2, 2002, as required by the Act.
- Passenger rail service in the U.S. cannot reach its potential as it is currently provided and managed by Amtrak.

Reform Concepts

The ARC action plan is based on three principal concepts of reform:

- Development of a new business model to restructure the NRPC to act as a management oversight agency and holder of Amtrak's rights, and separate train operations from infrastructure;

- Introduction of competition to the process of providing intercity rail passenger transportation. This would occur on a transitional and progressive basis, after careful examination of the content of service packages and scope; and

- Identification of stable, long term sources of funding. Although ARC recognized the importance of establishing a reliable source, it did not offer any specific plans or recommendations, nor endorse any previously proposed by others.

Proposed Structure

During ARC's early discussions on potential reforms, ARC decided that the Northeast Corridor (NEC) should be separated from the rest of Amtrak's passenger services with separate companies conducting NEC's operations and owning the infrastructure. With regard to operating the remainder of the Amtrak system, four options were examined: 1) creation of national or regional operating monopolies; 2) introduction of competition in long-haul markets only; 3) introduction of competition all in markets and 4) creation of a regionally-managed, operationally self-sufficient rail passenger network.

The ARC evaluated all four options and then chose to pursue the third option, namely open competition in all markets. One of the most important considerations about that option is that the new proposed NRPC would retain the statutory rights currently held by Amtrak to operate over the lines owned by freight railroads at incremental cost and receiving operating priority. That proposal is of particular relevance to the State of California.

The ARC proposal has three main components. Amtrak as it currently exists would be divided into three parts. First, the administration and oversight of the national passenger rail program would be conducted by a new NRPC small government corporation to be modeled after the United States Railway Association. Then a separate corporation under the control of the new NRPC would provide train-operating services. Another federal company would control the NEC infrastructure. The train-operating company would be called Amtrak, and would offer intercity passenger and

mail/express services outside the NEC, equipment repairs and commuter operations. Those services would be provided through contracts entered into between Amtrak and Federal or state authorities. Contracts would contain specific and measurable requirements to improve performance, including cost recovery, customer satisfaction and ridership. The ARC report assumed that either Amtrak or the franchisee would be free to set fares.

The ARC plan suggested that a pilot project be implemented by the NRPC to gain experience with franchising. Based on the experience observed in other countries, ARC recommended that NRPC should have the authority, at its discretion, to franchise some or all Amtrak train operations. Franchisees would operate under the NRPC statutory franchise and, very importantly to attract competitors, the NRPC would offer franchisees the same liability protection and access to insurance currently available to Amtrak. The Council further envisioned that Amtrak itself could be sold to the private sector, as a train operating organization.

With regard to labor, the ARC proposed two relevant elements: a) that the franchisees be subject to the Railway Labor Act (RLA), Federal Employees Liability Act and railroad retirement benefits and b) that current Amtrak employees be granted hiring preference, to the extent hiring was necessary. In addition, the Council recommended that labor agreements be subject to collective bargaining under the normal provisions of the RLA.

Last but not least, the ARC recommended that, after the transition period, Federal operating subsidies only be available to support long-distance services. Those subsidies would not be available to intrastate (corridor) and high-speed rail services but would be the responsibility of each State or region. Also, after the transition period, the train-operating company could be privatized.

Given the huge investments required to rehabilitate infrastructure and improve service, the ARC recommended that NEC infrastructure assets be transferred to a government corporation that would control operations, perform the required maintenance and undertake the necessary capital improvements. The proposed corporation would operate under a contractual agreement with the Federal government.

Funding Issues and Alternatives

Funding intercity rail service is not an issue promising a quick solution and the ARC clearly admitted that it was not offering any specific recommendations, nor endorsing any proposals previously submitted by others. ARC was clear in stating, however, that it supported adequate and secure intercity rail passenger service funding sources. The report recognized the size of the needed investment and emphasized that this should be the responsibility of all stakeholders.

General Accounting Office

The Amtrak Reform Act contained a mandate that Amtrak prepare "an action plan for the complete liquidation of the railroad," should ARC conclude that Amtrak would require Federal operating assistance beyond 2002. In the absence of a liquidation plan from Amtrak, Congress asked the General Accounting Office (GAO) to update an earlier report submitted on March 2, 1998, addressing possible Amtrak liquidation. The requirement was met by the GAO's preparation of *Potential Financial Issues in the Event That Amtrak Undergoes Liquidation*, dated September 20, 2002.

Focusing strictly on direct financial issues arising from the liquidation of Amtrak and not addressing other possible avenues, such as the potential that a trustee would reorganize the corporation rather than liquidate it, a brief summary of GAO's findings were as follows:

- Secured and unsecured creditors, including the Federal government and Amtrak employees and stockholders would have about $44 billion in potential claims against ownership interests in Amtrak's estate. The Federal government would account for about 80 percent of the claims;

- Labor protection payments, due to Amtrak's terminated employees would amount to $3.2 billion;

- It is unlikely that secured and unsecured creditors claims would be fully satisfied, since "Amtrak's assets are old, have little value or appear unlikely to have a value equal to the claims against them." The market value for the Northeast corridor has not been tested and has billions of dollars of deferred maintenance; and

- It is not likely that the stockholders would receive any payments for their ownership interest.

Administration's Position on Amtrak

The Administration established its views and position on Amtrak, when Secretary Mineta told the U.S. Chamber of Commerce on June 20, 2002, that authorities "must have the clarity of mind and discipline to fund and operate intercity rail passenger…"

The Secretary offered five Principles for Reform. They were:

- Create a system driven by sound economics;
- Require that Amtrak be converted into a pure operating company;
- Introduce carefully managed competition to provide higher quality rail services, at reasonable prices;
- Establish a long-term partnership between states and the Federal government to support intercity rail passenger services; and
- Create an effective public partnership, after a reasonable transition, to manage the assets of the Northeast Corridor.

Passenger Rail Investment Reform Act of 2003

Then, In July 2003, the Administration submitted to Congress the Passenger Rail Investment Reform Act of 2003. The Act required that over a six-year period Amtrak would become three companies. Under the six-year plan, in year-one the new business structures would be set up, in year-two funding and operations would remain very similar to current, and from year-three to six all structures and operations would completely transition to the new structure. In exchange for the eventual elimination of federal operating subsidies for both long-distance and corridor routes, the Act included a capital matching program for States subsidizing service.

The three proposed companies are as follows:

- A private passenger rail company ("Passenger Rail Service Provider") that would provide service under contract with states and multi-state compacts, run the current Reservations Center, and own and maintain Amtrak rolling stock. State governments desiring intercity passenger rail service would be required to assume all financial responsibility for Amtrak operations in or through their state.
- A private rail infrastructure company ("Passenger Rail Infrastructure Manager") that would maintain and operate the Northeast Corridor (NEC) infrastructure.

- A residual holding company (Amtrak) that would be a government corporation that would retain Amtrak's rights to use freight railroad tracks at incremental cost and its corporate name brand. This company would manage the Service Provider's contracts with host railroads. When states contract with other operators, Amtrak would oversee these contracts.

As part of the Act, the Administration proposed funding Amtrak at a level of $900 million in FY 2004. This Act was not approved by Congress.

Other Proposed FFY 2004 Amtrak Legislation

Senator Kay Bailey Hutchinson, along with three other Republicans, Senators Lott, Snowe and Burns, introduced the American Rail Equity Act of 2003 (S 1505). Senator Hutchinson is on the Senate Committee on Commerce, Science and Transportation and the Chair of the Surface Transportation and Merchant Marine Subcommittee that considers Amtrak issues. The bill provided a plan for Amtrak over the next six years, including a federal allocation of $12 billion over the six years. In addition, the bill authorized $48 billion in government backed tax credit bonds. While the bill did not pass out of the Senate, its existence indicates significant support in the Senate for Amtrak.

Amtrak's Position

In June 2002, David Gunn presented his position on Amtrak to the same Congressional panel as had Secretary Mineta. Mr. Gunn, who had assumed the presidency of Amtrak just a short time before, stated that the Amtrak model can and should work and that "no other (rail) passenger system in the world operates without some form of governmental subsidy." Mr. Gunn emphasized that Amtrak will never be profitable and that "no amount of councils, commissions, study groups, panels or symposiums will find a painless answer to what to do about Amtrak."

Mr. Gunn then described his plans for the next twelve months. In summary they were:

- Eliminate consultants and build a strong, management team that can solve its own problems;

- Streamline the organization and establish clear lines of authority and responsibilities (when he came on board, there were 85 vice-presidents);

- Build a zero-based budget from the ground up and establish controls. The existing budget was based on unrealistic assumptions regarding revenues and expenses;

- Review every route and service and improve efficiencies and cost recovery. This is achievable, self-sufficiency is not;

- Return Amtrak to the basics of running a railroad; and

- Fully fund Amtrak's $1.2 billion for FY 2003, while the short-term budget crisis was being addressed.

In April 2003, Amtrak released its FY 2004-2008 Amtrak Five-year Strategic Plan for capital and operating needs. The Plan proposed $1.8 billion in federal funding for FFY 2004 and decreasing to under $1.5 billion by FFY 2008. In general, slightly more than one-half of each year's budget is dedicated to capital expenses. The Plan's goal is to restore Amtrak's "physical plant and train equipment to a state of good repair and improve the railroad's operational reliability." Amtrak plans to release an updated five-year plan by mid-2004.

In 2003 and 2004 Amtrak started work on their strategic plan. The organization was streamlined with the reduction of 3,400 employees. The implementation of financial controls lead to core expenses being $100 million below budget in FFY 2003. Ridership was at a record high of 24 million passengers. And Amtrak started on their capital improvement program to address deferred improvements by renewing track on the Northeast Corridor and repairing damaged cars.

Amtrak made its FFY 2005 budget request in February 2004. At $1.798 billion, the request is a little higher than the 2003 Strategic Plan. This is because the FY 2004 appropriation level was below Amtrak's request, and so the capital program for that year had to be scaled back. The FFY 2005 budget request includes additional capital funds to accommodate for less-than-anticipated funds in 2003. There is certain to be considerable debate again this year on the Amtrak budget request for FFY 2005.

Consolidated Appropriations Act of 2004

The administration originally proposed Amtrak's FFY 2004 funding at a level of $900 million as part of the Passenger Rail Investment Reform Act of 2003. As discussed above, this Act was not passed. Amtrak operations and capital expenditures were ultimately funded in the amount of $1.225 billion in the Consolidated Appropriations Act of 2004. Amtrak had originally requested $1.8 billion for FFY 2004. Amtrak asserts that the appropriation amount is adequate for operations, but will not provide enough funding to complete the rebuilding of its physical plant and equipment planned for FFY 04 in their five-year strategic plan.

Section 151 of the Act is particularly relevant to California since it provides state-supported intercity passenger rail services with the ability to utilize a non-Amtrak operator to provide service for a route. The Act states:

> For the purpose of assisting State-supported intercity rail service, in order to demonstrate whether competition will provide higher quality rail passenger service at reasonable prices, the Secretary of Transportation, working with affected States, shall develop and implement a procedure for fair competitive bidding by Amtrak and non-Amtrak operations for State-supported routes:…"

The Act provides that a State that elects to contract with an operator other than Amtrak can negotiate with Amtrak for the use of Amtrak's facilities and services. If an agreement with Amtrak cannot be reached, the Secretary of Transportation is authorized to set the terms and compensation for the State's use of Amtrak's facilities and equipment. This is particularly important to California since it is almost entirely dependent on Amtrak for access to equipment maintenance facilities and Amtrak provides most of the equipment for the *Pacific Surfliners*.

Additionally, Section 151 provides $2.5 million from Amtrak's operating grant to implement the fair bidding and demonstration program procedures. On April 3, 2004, the FRA noticed in the Federal Registrar (Vol. 69, No. 71) a solicitation for comments on how the FRA should implement fair competitive bidding procedures, as well as a Statement of Interest from states interested in receiving grants to implement competitive bidding on a specific state-supported route, with comments and statements due by May 28, 2004.

It is important to note that both Union Pacific Railroad (UP) and Burlington Northern Santa Fe (BNSF) oppose assumption of Amtrak's rights and cost advantages by any entity. Both BN and UP have taken the position that an operator other than Amtrak would be required to pay higher rates than Amtrak currently pays. (The San Joaquins operate on UP and BNSF tracks, the Capitol Corridor operates on UP tracks and the Pacific Surfliner operates on UP and BNSF tracks as well as the tracks of several local transportation entities in Southern California.)

FFY 2005 Proposed Funding

In February 2004, the Administration introduced its FFY 2005 proposed budget. The budget emphasized the Administration's support of the Passenger Rail Investment Reform Act. The President's Budget Message states: "The Administration seeks $900 million for 2005 but would support as much as $1.4 billion in subsequent years for the intercity rail system if the requested reforms were enacted. The higher amount recognizes that the current system requires significant capital improvements before being turned over to the States."

IV. Functions Performed by Amtrak Under Its Contracts with the Department

Amtrak is the sole operator of intercity rail passenger services in California and the primary provider of facilities and personnel utilized in intercity rail passenger service. The California state system annually carries over 3.4 million riders and its unparalleled, successful use of connecting buses funded by the State and administered by Amtrak allows 680,000 riders to extend their rail trips to and from points not served by rail. The State provides both locomotives and passenger cars necessary to operate the *Capitol Corridor* and *San Joaquin* services and two sets of passenger cars used in the *Pacific Surfliner* service. Amtrak provides the locomotives and the balance of the passenger cars used in the *Pacific Surfliner* service. In addition, Amtrak contracts with various private bus companies to provide complementary bus service extending the market reach of each intercity rail passenger service.

Amtrak's functions with respect to each of the California corridors are presented in the following portion of the report, which is based upon interviews with Amtrak, the Department, regional rail passenger agencies, California commuter rail operators as well as review of prior studies.

Pacific Surfliner Service

Amtrak operates the *Pacific Surfliner* service pursuant to an agreement between Amtrak and the State that began on October 1, 2003 and will terminate on September 30, 2004. Under the FFY 2004 contract, the State's maximum financial obligation to Amtrak in connection with the Pacific Surfliner service is $21.167 million. The State annually renews its contract with Amtrak. The Department manages and monitors Amtrak's contract performance.

Pacific Surfliner service operates daily and provides scheduled rail passenger service between San Diego, Los Angeles, Santa Barbara and San Luis Obispo. Motorcoach service connects with *Pacific Surfliner* trains at San Luis Obispo, Santa Barbara, Oxnard, Van Nuys and Los Angeles. Trains are equipped with "*Pacific Surfliner*" equipment, including a Club/Café Car offering snack and beverage service on each train and a Business Class car. Trains operate in push-pull mode, requiring each train consist to include a cab control car. Seating is reserved in Business Class and

unreserved in Coach Class, except during the Thanksgiving period when all seats are reserved.

Table 3 arrays the functions that Amtrak performs in operating the *Pacific Surfliner* service. As can be seen from a review of Table 3, Amtrak performs the following functions, including in alphabetical order: bus operations, general and administrative activities, liability insurance, on-board services, rolling stock, stations and reservations, track access and train operations.

Bus Operations

Amtrak manages intercity bus service that complements the *Pacific Surfliner* as part of its contract with the State. Based upon the State's specifications, Amtrak solicits bus service bids and provides management oversight of the contracts. Contracts with bus operators are generally multi-year contracts requiring bus operators to provide the equipment and personnel necessary to provide the required service.

General and Administrative

Amtrak performs various general and administrative tasks in fulfilling its obligations under the contract. Functions performed by Amtrak include accounting, administrative, and management functions fulfilled by Amtrak employees located in California and Washington, D.C. Other functions, such as a portion of the route’s marketing and advertising, are performed by Amtrak in consultation with California and, in part, contracted out to advertising firms.

Liability Insurance

Liability insurance coverage is provided through Amtrak's corporate liability plan. The Amtrak plan is funded through a combination of self insurance for coverage up to the purchased insurance policy deductible and purchased insurance for coverage above the deductible. Amtrak funds the self-insurance and purchased insurance by charging a mileage-based premium where it offers intercity rail service. This is an especially important feature of the California State-supported train service currently in effect since California law precludes the State from assuming liability of others. In other words, the State could not purchase liability insurance to cover a contractor operating intercity rail service in California.

Insurance costs for the *Pacific Surfliner* service totaled approximately $6.1 million in the FFY 02. Of this amount, approximately $600,000 represents premiums paid to

purchase insurance to protect the State's investment in rolling stock. Also, $5.5 million is paid to Amtrak for liability coverage. If Amtrak were not the operator of the *Pacific Surfliner* service, California would have to negotiate a new liability agreement with the freight railroads. The freight railroads would insist that California assume a higher level of risk than Amtrak presently assumes in order to gain access to their tracks. Also the new contractor would have to procure commercial insurance to replace the coverage provided under the Amtrak plan as well as purchase equipment coverage. Amtrak most likely currently enjoys an economy of scale in their insurance costs that a new operator would probably not be able to obtain. Thus, total insurance costs would likely increase above present costs.

On-board Services

Commissary services supporting *Pacific Surfliner* service are performed at Los Angeles by an outside contractor, Gate Gourmet, under the terms of a national contract between Amtrak and Gate Gourmet. The commissary facility is housed in a building that Amtrak owns located in Amtrak's Los Angeles equipment maintenance facility. The commissary was formerly used by Amtrak when Amtrak operated the facility with its own employees.

Gate Gourmet operates the commissary facility. On-board food service personnel are Amtrak employees who verify the stock received from Gate Gourmet, stock the food car, serve the food and tally the stock returned to Gate Gourmet.

Rolling Stock

Amtrak provides the 14 locomotives and most of the passenger cars used in the *Pacific Surfliner* service. The State contributes ten cars to the *Surfliner* fleet, while Amtrak provides 40 *Surfliner* cars and four *Superliner* coach-baggage cars on a consistent basis. Amtrak also provides up to twelve Horizon cars on a seasonal basis. Amtrak personnel maintain the equipment at Amtrak's 8th Street facility in Los Angeles. Layover service and cleaning at Los Angeles is performed by Amtrak employees located at the maintenance facility. Layover service and cleaning at outlying locations is performed by outside contractors. Amtrak also maintains and services several of its long distance trains at its maintenance facility in Los Angeles, including the *Cost Starlight*, *Southwest Chief* and *Sunset Limited*.

Stations and Reservations

Station access is provided either through Amtrak's national agreements with UP, agreements with Catellus Development Corporation (Catellus), which owns the Los Angeles and San Diego stations and agreements with local governments. Employees at staffed stations are Amtrak's and provide service to both the *Pacific Surfliner* and Amtrak's long-distance trains where both trains stop at a station. Amtrak employees assigned to staff any station perform all functions required to operate that facility, such as ticketing, baggage handling and cleaning. However, there are cleaning contracts in-place for Santa Barbara, Van Nuys and San Diego. Also, occasional heavy cleaning of bathrooms is performed by contractors.

Information and ticketing services outside the stations are performed by Amtrak employees who work at its nationwide reservation centers.

Track Access

Pacific Surfliner trains operate over the tracks owned by Burlington Northern Santa Fe (BNSF) and UP freight railroads and by various transportation commissions located in southern Californian counties. Operations over right-of-way owned by BNSF and UP are made pursuant to the national contract between Amtrak and BNSF or Amtrak and UP under which Amtrak operates the national rail passenger system. Amtrak retained the right to operate over the rights-of-way operated by the Southern California Regional Rail Authority (SCRRA) pursuant to an agreement among Amtrak, SCRRA, the Los Angeles County Metropolitan Transportation Authority (LACMTA), Orange County Transportation Authority (OCTA), Riverside County Transportation Commission (RCTC), San Bernardino Associated Governments (SANBAG) and Ventura County Transportation Commission (VCTC) and a separate agreement among Amtrak, the San Diego Metropolitan Transit District Board (MTDB) and North County Transit Development Board (NCTD) and Catellus (at Los Angeles Union Station).

Train Operations

Amtrak provides train and engine crews necessary to operate the *Pacific Surfliner* service. Train and engine crews are Amtrak employees and work under the terms of Amtrak's negotiated agreements with its employees. Crews are assigned to *Pacific Surfliner* trains through Amtrak's national crew calling center in Wilmington, Delaware.

Amtrak provides management personnel necessary to supervise train and engine crews, meet Federal Railroad Administration (FRA) rules and regulations and oversee

daily operations. All Amtrak employees are subject to the Railroad Retirement Act and Railroad Unemployment Insurance Acts, which require the payment of additional payroll taxes in addition to those required under the Social Security Act and the Federal Employees Liability Act (in lieu of Workers Compensation).

San Joaquin Service

Amtrak operates the *San Joaquin* service pursuant to an agreement between Amtrak and the State that began on October 1, 2003 and will terminate on September 30, 2004. Under the FFY 2004 contract, the State's maximum financial obligation to Amtrak in connection with the *San Joaquin* service is $28.385 million. The State annually renews its contract with Amtrak. The State manages and monitors Amtrak's contract performance.

The *San Joaquin* service operates daily and provides scheduled rail passenger service between Bakersfield and Oakland and Bakersfield and Sacramento. Bus service connects with *San Joaquin* trains at Bakersfield, Emeryville, Fresno, Hanford, Martinez, Merced, Modesto, Sacramento and Stockton. Trains are equipped with “California Car” equipment, including a Club/Café Car offering snack and beverage service on each train. Trains operate both in push-pull mode and conventional pull mode. Each train consist includes a cab control car so that push-pull operation is possible. All seating is reserved at all times.

Table 4 arrays the functions that Amtrak performs in operating the *San Joaquin* service. As can be seen from a review of Table 4, Amtrak performs the following functions, included in alphabetical order: bus operations, general and administrative activities, liability insurance, on-board services, rolling stock, stations and reservations, track access and train operations.

Bus Operations

Amtrak manages intercity bus service which complements the *San Joaquin* as part of its contract. Based upon the State's specifications, Amtrak solicits bus service bids and provides management oversight of the contracts. Contracts with bus operators are generally multi-year contracts requiring bus operators to provide the equipment and personnel necessary to provide required services.

General and Administrative

Amtrak performs various general and administrative tasks in fulfilling its obligations under the contract. Functions performed by Amtrak include accounting, administrative and management functions, fulfilled by Amtrak employees located in California and Washington, D.C. Other functions such as marketing and advertising are performed, in part, by Amtrak in consultation with California and, in part, contracted out to advertising firms.

Liability Insurance

Liability insurance coverage is provided through Amtrak's corporate liability plan. The Amtrak plan is funded through a combination of self insurance for coverage up to the purchased insurance policy deductible and purchased insurance for coverage above the deductible. Amtrak funds the self-insurance and purchased insurance by charging a mileage-based premium where it offers intercity rail service. This is an especially important feature of the California State-supported train service currently in effect since California law precludes the State from assuming liability of others. In other words, the State could not purchase liability insurance to cover a contractor operating intercity rail service in California.

Insurance costs for the *San Joaquin* service totaled approximately $4.4 million in the FFY 02. Of this amount, approximately $450,000 represents premiums paid to purchase insurance to protect the State's investment in rolling stock. Also, $3.95 million is paid to Amtrak for liability coverage. If Amtrak were not the operator of the *San Joaquin* service, California would have to negotiate a new liability agreement with the freight railroads. The freight railroads would insist that California assume a higher level of risk than Amtrak presently assumes in order to gain access to their tracks. Also the new contractor would have to procure commercial insurance to replace the coverage provided under the Amtrak plan as well as purchase equipment coverage. Amtrak most likely currently enjoys an economy of scale in their insurance costs that a new operator would probably not be able to obtain. Thus, total insurance costs would likely increase above present costs.

On-board Services

Commissary services supporting the *San Joaquin* trains are performed at Oakland by an outside contractor under the terms of a national contract between Amtrak and the contractor, Gate Gourmet. The commissary facility is housed in a building that Amtrak leases from UP and at the same physical location as Amtrak's equipment maintenance

facility. The building is used by both Amtrak and UP. Amtrak's portion of the building serves as both the commissary and the reporting center for *San Joaquin* train and engine crews. The facility replaced a commissary facility that was demolished during reconstruction of the Interstate highway following an earthquake. Although the new maintenance facility under construction (scheduled to open in October 2004) is designed to include a new commissary, the portion of the building that will house the commissary is part of a separate project that is not funded and is to be built at a later date.

On-board food service personnel are Amtrak employees who verify the stock received from Gate Gourmet, stock the food car, serve the food and tally the stock returned to Gate Gourmet.

Rolling Stock

The State provides a shared pool of California Car equipment consisting of 17 locomotives and 78 passenger cars that are used on both the *San Joaquin* and *Capitol Corridor* services although Amtrak locomotives are used at times as spares. Layover service and cleaning at Oakland is performed by Amtrak employees located at the maintenance facility. Management of spare parts and supplies required to maintain State-owned equipment is done by Amtrak employees through a parts inventory which is captured by a separate account in Amtrak's accounting system. The CCJPA under the Equipment Lease and Renegotiated Maintenance Transfer Agreement with the State is required to provide oversight of maintenance operations for the Northern California equipment pool. With the exception of a daily turnaround service of the California Zephyr and seasonal special trains, all maintenance of equipment activities at Amtrak's Oakland facility are related to the *San Joaquin* and *Capitol Corridor* services. Layover service and cleaning at outlying locations is performed by outside contractors.

Currently, Amtrak leases part of UP's yard in Oakland to perform maintenance on the California equipment and pays UP to fuel, lube and sand the State-owned locomotives at UP's locomotive servicing facility in Oakland. Amtrak shuttles locomotives to Los Angeles where Amtrak personnel perform the required FRA 92-day inspections and any necessary repairs. That arrangement will cease when the new equipment facility, currently under construction, opens and most servicing and maintenance will be performed in Oakland. (Major overhaul work is and will continue to be contracted to vendors at other locations.) Although the State and Amtrak are jointly funding construction of the facility, Amtrak has the right to operate the facility as long as it is

meeting specified equipment utilization standards. Construction and use of the new facility is governed by the Agreement to Perform Capital Improvements For California Amtrak Service between Amtrak and the State, dated September 4, 2001 and the Maintenance Agreement between Amtrak and California, dated November 20, 1994 and revised April 1, 1999.

Stations and Reservations

Except for the station at Emeryville, station access is provided either through Amtrak's national agreement with UP granting access to UP's facilities or agreements with local governments. The Emeryville station is being purchased by Amtrak under a lease-purchase agreement. Employees at staffed stations are Amtrak's and provide service to both the *San Joaquin* and Amtrak's long-distance trains where both trains access a station. A single employee assigned to staff any station performs all functions required to operate that facility, such as ticketing and cleaning. Occasional heavy cleaning of bathrooms is performed by contractors.

Information and ticketing services outside the stations are performed by Amtrak employees who work at its nationwide reservation centers.

Track Access

San Joaquin trains operate over tracks of the BNSF and UP pursuant to the national contract between Amtrak and BNSF or Amtrak and UP under which Amtrak operates the national rail passenger system and accesses the carriers' respective facilities. The agreements permit Amtrak to access passenger stations owned by BNSF and UP.

Train Operations

Amtrak provides train and engine crews necessary to operate the *San Joaquin* service. Train and engine crews are Amtrak employees and work under the terms of Amtrak's negotiated agreements with its employees. Crews are assigned to *San Joaquin* trains through Amtrak's national crew calling center in Wilmington, Delaware.

Amtrak provides management personnel necessary to supervise train and engine crews, meet Federal Railroad Administration (FRA) rules and regulations and oversee daily operations. All Amtrak employees are subject to the Railroad Retirement Act and Railroad Unemployment Insurance Acts, which require the payment of additional payroll taxes in addition to those required under the Social Security Act and the Federal Employees Liability Act (in lieu of Workers Compensation).

Capitol Corridor Service

Amtrak operates the *Capitol Corridor* service pursuant to an agreement between Amtrak and the Capitol Corridor Joint Powers Authority (CCJPA), that began on October 1, 2003 and will terminate on September 30, 2004. The CCJPA and Amtrak have had annual contracts since 1998 when the service was first transferred to the CCJPA. Under the FFY 2004 contract, CCJPA's maximum financial obligation to Amtrak associated with the *Capitol Corridor* service is $23.586 million. CCJPA funds the *Capitol Corridor* service under an interagency transfer agreement between the CCJPA and the State that became effective July 1, 1998. The CCJPA manages and monitors Amtrak's contract performance.

The *Capitol Corridor* service operates daily and provides scheduled rail passenger service between San Jose, Oakland, Sacramento and Auburn. Motorcoach service connects with *Capitol Corridor* trains at Emeryville, Sacramento, Martinez, Oakland and San Jose. Trains are equipped with “California Car” equipment, including a Club/Café Car offering snack and beverage service on each train. Trains operate in push-pull mode, requiring each train consist to include a cab control car. Seating is unreserved.

Table 5 arrays the functions that Amtrak performs in operating the *Capitol Corridor* service. As can be seen from a review of Table 5, Amtrak performs the following functions on the *Capitol Corridor* service, included in alphabetical order: bus operations, general and administrative activities, liability insurance, on-board services, rolling stock, stations and reservations, track access and train operations.

Bus Operations

Amtrak manages intercity bus service which complements *Capitol Corridor* train service as part of its contract with CCJPA. Based upon CCJPA’s specifications, Amtrak solicits bids to provide bus service and provides management oversight of the contracts. As a result of the arrangement, bus service is obtained under Amtrak’s procurement process instead of the CCJPA’s. Contracts with bus operators are generally multi-year contracts and require bus operators to provide the equipment and personnel necessary to provide the required service.

General and Administrative

Amtrak performs various general and administrative tasks in fulfilling its obligations under the contract. Functions performed by Amtrak include accounting, administrative and management tasks, fulfilled by Amtrak employees located in California and Washington, DC. Other functions such as a portion of the route's marketing and advertising are performed by Amtrak in consultation with the CCJPA and, in part, contracted out to advertising firms.

Liability Insurance

Liability insurance coverage is provided through Amtrak's corporate liability plan. The Amtrak plan is funded through a combination of self insurance for coverage up to the purchased insurance policy deductible and purchased insurance for coverage above the deductible. Amtrak funds the self-insurance and purchased insurance by charging a mileage-based premium where it offers intercity rail service. This is an especially important feature of the California State-supported train service currently in effect since California law precludes the State from assuming liability of others. In other words, the State could not purchase liability insurance to cover a contractor operating intercity rail service in California.

Insurance costs for the *Capitol Corridor* service totaled approximately $1.4 million in the FFY 02. Of this amount, approximately $107,000 represents premiums paid to purchase insurance to protect the State's investment in rolling stock. Also, $1.3 million is paid to Amtrak for liability coverage. If Amtrak were not the operator of the *Capitol Corridor* service, California would have to negotiate a new liability agreement with the freight railroads. The freight railroads would insist that California assume a higher level of risk than Amtrak presently assumes in order to gain access to their tracks. Also the new contractor would have to procure commercial insurance to replace the coverage provided under the Amtrak plan as well as purchase equipment coverage. Amtrak most likely currently enjoys an economy of scale in their insurance costs that a new operator would probably not be able to obtain. Thus, total insurance costs would likely increase above present costs.

On-board Services

Commissary services supporting the *Capitol Corridor* service are performed at Oakland at the same facility and by the same contractor, Gate Gourmet, who performs commissary services supporting the *San Joaquin* service under the terms of a national contract with Amtrak. On-board food service personnel are Amtrak employees who

verify the stock received from Gate Gourmet, stock the food car, serve the food and tally the stock returned to Gate Gourmet.

Rolling Stock

The State provides a shared pool of California Car equipment consisting of 17 locomotives and 78 passenger cars that are used on both the *Capitol Corridor* and *San Joaquin* services although Amtrak locomotives are used at times as spares. Layover service and cleaning at Oakland is performed by Amtrak employees located at the maintenance facility. Management of spare parts and supplies required to maintain State-owned equipment is done by Amtrak employees through a parts inventory which is captured by a separate account in Amtrak's accounting system. The CCJPA under the equipment lease with the State is required to provide oversight of maintenance operations for the Northern California equipment pool. With the exception of a daily turnaround service of the California Zephyr and seasonal special trains, all maintenance of equipment activities at Amtrak's Oakland facility are related to the *Capitol Corridor* and *San Joaquin* services. Layover service and cleaning at outlying locations is performed by outside contractors.

Currently, Amtrak leases part of UP's yard in Oakland to perform maintenance on the California equipment and pays UP to fuel, lube and sand the State-owned locomotives at UP's locomotive servicing facility in Oakland. Amtrak shuttles locomotives to Los Angeles where Amtrak personnel perform the required FRA 92-day inspections and any necessary repairs. That arrangement will cease when the new equipment facility, currently under construction, opens and most servicing and maintenance will be performed in Oakland. (Major overhaul work is and will continue to be contracted to vendors at other locations.) Although the State and Amtrak are jointly funding construction of the facility, Amtrak has the right to operate the facility as long as it is meeting specified equipment utilization standards. Construction and use of the new facility is governed by the Agreement to Perform Capital Improvements For California Amtrak Service between Amtrak and the State, dated September 4, 2001 and the Maintenance Agreement between Amtrak and California, dated November 20, 1994 and revised April 1, 1999.

Stations and Reservations

Except for the station at Emeryville, station access is provided either through Amtrak's national agreement with UP granting access to UP's facilities or agreements with local governments. The Emeryville station is being purchased by Amtrak under a lease-

purchase agreement. Employees at staffed stations are Amtrak employees and provide service to both Capitol Corridor and Amtrak's long-distance trains where trains of both types access the station. Employees assigned to staff any station usually perform all functions required to operate that facility, such as ticketing, baggage handling and light cleaning. Occasional heavy cleaning of bathrooms is performed by contractors.

Information and ticketing services outside the stations are performed by Amtrak employees who work at its nation wide reservation centers.

Track Access

Capitol Corridor trains operate over UP tracks pursuant to the national contract between Amtrak and UP under which Amtrak operates the national rail passenger system and accesses UP's facilities. The agreement permits Amtrak to access passenger stations owned by UP which include the passenger station at Sacramento where turnaround and layover service is performed. A short segment of track belonging to the Peninsula Corridor Joint Powers Board (PCJPB) is used to access San Jose's Diridon station.

Train Operations

Amtrak provides train and engine crews necessary to operate the *Capitol Corridor* service working under the terms of Amtrak's negotiated agreements with its employees. Crews are "called" (assigned) to *Capitol Corridor* trains by Amtrak's national crew calling center in Wilmington, Delaware.

Amtrak provides management personnel necessary to supervise train and engine crews, meet Federal Railroad Administration (FRA) rules and regulations and oversee daily operations. All Amtrak employees are subject to the Railroad Retirement Act and Railroad Unemployment Insurance Acts, which require the payment of additional payroll taxes in addition to those required under the Social Security Act and the Federal Employees Liability Act (in lieu of Workers Compensation).

Table 3

Functions Performed By Amtrak
To Support Operation of *Pacific Surfliner* Service

Function	How Performed
Bus Operations	
Bus operations	Amtrak contracts out but performs administrative and operational oversight.
General and Administrative	
Accounting	Amtrak employees.
Insurance coverage	Amtrak insurance/liability plan.
Management and administration	Amtrak employees.
Marketing	Amtrak contracts out in conjunction with California.
Liability and Insurance	
Liability	Amtrak's nationwide corporate liability plan.
Commercial insurance	Provides coverage for equipment.
Amtrak liability plan	Provides coverage for people, accidents, negligence.
On-board Services	
Commissary facilities	Owned by Amtrak.
Commissary operations	Amtrak contracts out under a national agreement.
On-board food service	Amtrak employees.
Rolling Stock	
Equipment – locomotives and cars	All locomotives and most cars provided by Amtrak
Equipment maintenance facility	Owned by Amtrak.
Equipment maintenance staff	Amtrak employees.
Equipment maintenance inventories	Managed by Amtrak.
Layover and cleaning	Amtrak employees perform work at Los Angeles and contractors perform cleaning at outlying points
Stations and Reservations	
Station access	Agreements with UP, Catellus and local governments.
Staffing	Amtrak employees
Reservations and Information	Amtrak employees and facilities.
Track Access	
Access to right-of-way	Amtrak's national access agreement with BNSF, UP and Catellus. Amtrak agreement with SCRRA and MTDB -
Train Operations	
Train and engine crews	Amtrak employees.
Switch engines and crews at Los Angeles	Amtrak locomotive and employees, shared with long-distance service.
Transportation supervision	Amtrak employees.

Source: RLBA.

Table 4

Functions Performed By Amtrak
To Support the Operation of *San Joaquin* Service

Function	How Performed
Bus Operations	
Bus operations	Amtrak contracts out but performs administrative and operational oversight.
General and Administrative	
Accounting	Amtrak employees.
Insurance coverage	Amtrak insurance/liability plan.
Management and administration	Amtrak employees.
Marketing	Amtrak contracts out in conjunction with California.
Liability and Insurance	
Liability	Amtrak's nationwide corporate liability plan.
Commercial insurance	Provides coverage for equipment.
Amtrak liability plan	Provides coverage for people, accidents, negligence.
On-board Services	
Commissary facilities	Leased by Amtrak from UP.
Commissary operations	Amtrak contracts out under a national agreement.
On-board food service	Amtrak employees.
Rolling Stock	
Equipment – locomotives and cars	Amtrak occasionally provides substitute equipment when sufficient State-owned equipment is not available.
Equipment maintenance facility	Current facility leased by Amtrak from UP. New facility is scheduled to open in September 2004 and will be jointly owned by Caltrans and Amtrak and operated by Amtrak.
Equipment maintenance staff	Amtrak employees.
Equipment maintenance inventories	Managed by Amtrak.
Layover and cleaning	Amtrak employees perform work at Oakland and contractors perform cleaning at outlying points
Stations and Reservations	
Station access	Amtrak's national access agreements with BNSF and UP and local governments with the exception of Emeryville station which is being purchased by Amtrak under a lease-purchase agreement.
Staffing	Amtrak employees.
Reservations and information	Amtrak employees and facilities.
Track Access	
Access to right-of-way	Amtrak's national access agreement with BNSF and UP.
Train Operations	
Train and engine crews	Amtrak employees.
Switch engine and crew at Oakland	Amtrak locomotive and employees, shared with long-distance service
Transportation supervision	Amtrak employees.

Source: RLBA.

Table 5

Functions Performed By Amtrak
To Support the Operation of *Capitol Corridor* Service

Function	How Performed
Bus Operations	
Bus operations	Amtrak contracts out but performs administrative and operational oversight.
General and Administrative	
Accounting	Amtrak employees.
Management and administration	Amtrak employees.
Marketing	Amtrak contracts out in conjunction with CCJPA.
Liability and Insurance	
Liability	Amtrak's nationwide corporate liability plan.
Commercial insurance	Provides coverage for equipment.
Amtrak liability plan	Provides coverage for people, accidents, negligence.
On-board Services	
Commissary facilities	Leased by Amtrak from UP.
Commissary operations	Amtrak contracts out under a national agreement.
On-board food service	Amtrak employees.
Rolling Stock	
Equipment – locomotives and cars	Amtrak occasionally provides substitute equipment when sufficient State-owned equipment is not available
Equipment maintenance facility	Current facility leased by Amtrak from UP. New facility is scheduled to open in September 2004 and will be jointly owned by Caltrans and Amtrak and operated by Amtrak.
Equipment maintenance staff	Amtrak employees.
Equipment maintenance inventories	Managed by Amtrak.
Layover and cleaning	Amtrak employees perform work at Oakland and contractors perform cleaning at outlying points
Stations and Reservations	
Station access	Amtrak's national access agreement with UP and agreements with local governments with the exception of Emeryville station which is being purchased by Amtrak under a lease-purchase agreement.
Staffing	Amtrak employees.
Reservations and Information	Amtrak employees and facilities.
Track Access	
Access to right-of-way	Amtrak's national access agreement with UP.
Train Operations	
Train and engine crews	Amtrak employees.
Switch engine and crew at Oakland	Amtrak locomotive and employees, shared with-long distance service.
Transportation supervision	Amtrak employees.

Source: RLBA.

V. Amtrak's Legal Rights, Facilities, Responsibilities and Resources

Amtrak relies on various legal rights, contracts and facilities to operate service in California and across the United States. Since it began running passenger service over 30 years ago, Amtrak has developed an expertise and institutional framework that provides it with advantages in operating rail passenger services.

Amtrak's Legal Rights

Amtrak relies upon a combination of legal rights, contractual responsibilities and tangible facilities and resources to operate service in California, both State-sponsored and services that are part of Amtrak's core system.

In the past, under 49 USC §24701 Amtrak possessed an effective first right to provide intercity rail passenger service. Formerly, 49 USC §24701 said that an entity other than Amtrak "…may provide intercity rail passenger transportation over a route over which Amtrak provides scheduled intercity rail passenger transportation…" only with the consent of Amtrak. The language was removed from the 49 USC §24701 by the Amtrak Reform and Accountability Act of 1997 (PL 105-134), the same act that established the Amtrak Reform Council.

However, Amtrak still retains both statutory and competitive advantages (and disadvantages) as an intercity rail passenger service operator. The three primary statutory-based advantages are: 1) ability to access rights-of-way and other fixed facilities owned by freight railroads; 2) ability to pay for that access on an incremental cost basis and 3) dispatching priority. Amtrak also enjoys competitive advantages in terms of its national reservation system, its system-wide insurance plan and various facilities, equipment, personnel, existing agreements and institutional knowledge. Disadvantages may include overhead cost structure, bureaucracy, restrictive labor agreements and image.

Right of Access and Incremental Costs

Since the inception of Amtrak, Amtrak has possessed the statutory authority to access the facilities of any rail carrier or regional transportation authority to provide intercity passenger service. Under 49U.S.C 24308 Amtrak is able to enter into such agreements on a voluntary basis. If Amtrak and a rail carrier or regional transportation authority cannot reach agreement, the Surface Transportation Board (STB) is required to determine the amount of compensation based upon incremental cost to provide Amtrak

with access to the facility. Amtrak's ability to insist upon access and obtain this access on such favorable terms, incremental cost, provides it with a distinct advantage that is not possessed by other potential service providers. As noted above, the nation's freight railroads, including BNSF and UP over whose facilities the California services operate in-part, are opposed to any assumption or transfer of Amtrak's access rights by any other party.

Dispatching

Under 49U.S.C 24308(c) the intercity and commuter rail services provided by or on behalf of Amtrak are required to be given dispatching priority over freight trains. Outside the NEC, Amtrak is dependent upon these same freight operators whose facilities it uses to give Amtrak trains the priority required under law. In many instances Amtrak trains operate over the tracks of several different carriers as it moves over a given route. As discussed above, each of the California services has a different arrangement under which its trains are dispatched. Amtrak has tried to obtain the dispatching priority to which it is entitled through the use of incentive contracts, which tie additional payments to the on-time performance of Amtrak trains. The failure of Amtrak trains to obtain the dispatching priority to which they are entitled has been the topic of numerous press reports.

The *Capitol Corridor* service has experienced particular difficulties in achieving the dispatching priority that it believes it is entitled to under the law. The CCJPA believed, that the dispatching priority given to *Capitol Corridor* service trains was negatively affected by their inclusion in Amtrak's nationwide incentive payments to UP, over whose tracks the *Capitol Corridor* service operates. Amtrak's long distance trains were often delayed to such an extent while on UP that it was unlikely that UP could obtain an on-time incentive payment even if the *Capitol Corridor* service operated on time. CCJPA, Amtrak and UP have agreed to contract modifications that have separated out incentive payments related to *Capitol Corridor* service from the national contract that will hopefully result in improved performance. Amtrak continues to calculate the on-time performance and makes payments to UP on behalf of the CCJPA.

The *Pacific Surfliner* service is also subject to dispatching priorities contained in the previously discussed agreement entered into in March 1994 by various transportation authorities in the Los Angeles area. This document includes agreements as to the priority of intercity and commuter trains based upon time of day and direction of movement.

Labor

Prior to the Amtrak Reform Act, Amtrak was required under 49U.S.C 24706(c) to provide one years pay and benefits for each year of service up to a total of six years of pay and benefits when jobs were discontinued or reduced due to service reduction below three trains per week. The Amtrak Reform Act also repealed provisions that prohibited contracting out work that would result in the elimination of Amtrak jobs. Prior to the passage of the Act it has been allowable to contract out food and beverage service. The commissary portion had already been contracted out to Gate Gourmet under a national contract which includes the California services. When Amtrak and its labor unions were not able to negotiate new agreements, the matter was submitted to an arbitrator who reduced the cap from six to five years. Since the passage of the Amtrak Reform Act, Amtrak has not pursued contracting out to any extent on a system-wide basis or with respect to the California trains.

Liability

Liability in connection with accidents to passengers and property is a central issue to be negotiated in almost every contract between passenger carriers and freight railroads. Freight railroads in the United States have taken the position that since they do not conduct passenger operations, they would not have liability as regards passengers and claims resulting from passenger operations if they did not allow passenger services access to their freight carrier facilities. Thus, freight railroads usually require passenger carriers to accept liability regarding their own passengers and equipment regardless of which party is at fault.

When Amtrak was first formed, the freight railroads assumed liability for passenger train operations on their tracks by charging Amtrak a percentage over-ride to their liability policy. However, shortly after Amtrak's inauguration, the industry negotiated a no fault arrangement where each party took responsibility for their own employees and equipment, and other risks - such as third party, were assigned. The freight railroads received a small payment for their residual risk. This arrangement has been slightly modified over the years, but has remained in place for the past 30 years.

Currently, under the Amtrak liability contract with the freight carriers, each party retains liability for its own employees, equipment and property and Amtrak assumes all passenger liability. Grade crossing accidents of Amtrak tr ins are the responsibility of Amtrak. Damage to right-of-way and injuries to trespassers were originally the

responsibility of the freight carriers, however, after about 20 years of Amtrak existence the trespasser responsibility was transferred to Amtrak. In the event of a derailment, Amtrak pays for re-railing the equipment and the freight carrier pays for restoring the track.

Based upon a cost study conducted in the early 1970s, Amtrak paid the carriers 3.67 cents per train mile for their residual risk. This figure remained constant until the early 1990s, when Amtrak payments to carriers increased to 7.34 cents. A cost study conducted in the mid-1980's indicated that some carriers were ahead, some were right on target, and some were behind. This no-fault agreement has worked well for the parties. The concept being that if the parties argued about fault, they would make a case for third party plaintiffs. Although the system has occasionally provoked criticism when the carrier was clearly at fault, overall the arrangement has worked well for over thirty years.

In the United States, an agency providing commuter rail service will also usually provide liability coverage through a blend of self and purchased insurance. Its arrangements with freight railroads will generally require it to assume liability for its own passengers, regardless of who is at fault. Since September 11, 2001, the liability issue has become even more contentious and commercial coverage premiums easily have doubled and tripled when it has been possible to obtain renewal of insurance coverage.

The freight railroads have expressed a strong preference to at least maintain the liability provisions contained in the present Amtrak contract. It should be possible to agree upon liability language with the freight carriers if Amtrak were no longer providing service. However, it is important to remember that California law precludes the State from assuming liability of others. Thus the State could not directly purchase insurance. Also, it is likely that the freight railroads would insist that California assume a higher level of risk than Amtrak presently assumes in order to gain access to their tracks. Thus, the cost of liability insurance coverage would likely increase above present costs.

Amtrak's Nationwide Facilities, Responsibilities and Resources

In addition to Amtrak's facilities used in providing intercity passenger service in California, Amtrak utilizes facilities across the country in the provision of nationwide rail passenger services which are numerous and varied, including rail tracks, stations, maintenance shops and yards as well as rail vehicles. The largest facility owned by Amtrak is the NEC, which extends along the eastern seaboard from Washington, DC to

Boston, Massachusetts. Amtrak also owns rail track and facilities in southwest Michigan, both properties totaling 730 miles of tracks.

Amtrak also owns major rolling stock maintenance facilities in Wilmington and Bear, Delaware and Beech Grove, Indiana. Other maintenance facilities are located in Boston, Massachusetts; Chicago, Illinois; Hialeah, Florida; Los Angeles and Oakland, California; New Orleans, Louisiana; New York, Niagara Falls and Rensselaer, New York; Seattle, Washington; and Washington, DC.

Amtrak owns seventeen tunnels and 1,186 bridges and certain stations along the NEC and it owns Union Station in Chicago, Illinois. The tracks and stations owned by Amtrak are but a small fraction of the 500 stations and 22,000 miles of tracks that it uses nationwide to provide service. Most tracks used by Amtrak are owned by freight railroads and accessed by means of a payment by Amtrak. Freight railroads also receive additional incentives if Amtrak trains meet on-time performance goals while running over the freight railroad's tracks. Stations are usually rented from a variety of owners, including real estate developers, railroads, regional public agencies and freight railroads.

On weekdays, Amtrak operates up to 265 trains per day, excluding commuter trains that Amtrak runs under contracts entered into with commuter authorities. In FFY 2002, Amtrak served 23.4 million passengers, or approximately 65,000 passengers per day. Amtrak's ten busiest stations range from Penn Station in New York City, with 8.8 million annual Amtrak passengers at the upper end to Baltimore, Maryland with 837,000 annual passengers per day at the other end. The stations in between in descending order are Philadelphia, Pennsylvania; Washington, DC; Chicago, Illinois; Newark, New Jersey; Boston, Massachusetts; Trenton, New Jersey; Los Angeles, California; and Princeton Junction, New Jersey.

Amtrak operates a fleet containing 2,141 cars that includes 168 sleeper cars, 760 coaches, 126 first class/business class cars, 66 dormitory/crew cars, 225 lounge/café/dinette cars, and 92 dining cars. Baggage cars make up the remainder of the fleet. Amtrak also operates 425 locomotives, of which 351 are diesel-electric and 74 are electric. In addition, Amtrak operates nineteen *Acela* trainsets, dedicated to services on the NEC. Each train consists of two power cars and six passenger cars.

The ownership of rolling stock is shared among many parties, including States such as California and New York; banks and leasing companies and, of course, Amtrak. Amtrak also owns and leases back certain equipment such as Sound Transit commuter cars and locomotives.

Amtrak currently provides operation and maintenance services to five commuter rail organizations, namely Caltrain and Coaster in California; Maryland's *MARC*; Virginia's *VRE* and Shoreline East in Connecticut. In addition, it operates commuter trains on behalf of *Metrolink*, in Los Angeles and maintains commuter trains operated by Sound Transit, in Seattle. Amtrak serves an additional 61.1 million people annually through those services.

Amtrak's California Facilities

Amtrak's facilities and resources in California were described in Section IV, Functions Performed by Amtrak Under Its Contracts With the Department. Amtrak owns its equipment maintenance facility in Los Angeles, which includes a commissary facility, and with the Department jointly owns an equipment maintenance facility that is being constructed in Oakland. Besides the Emeryville station, which is being purchased by Amtrak under a lease-purchase agreement, Amtrak leases all the other facilities and stations that it owns.

VI. Different Methods Public Agencies Have Used to Bid Out the Operation of Intercity and Commuter Rail Services

Passenger train services have been increasing in the United States in recent years with an increasing number of urban regions initiating commuter rail service. These services are operated under a variety of organizational structures. Below is a description of these services and their relevance to competitive bidding of intercity rail services. Internationally, in the last twenty or so years significant changes have been made in the ownership and management of rail systems. A review of the financial and management structures of these systems has relevance to alternative structures for intercity passenger rail in California.

Contracting Out Of Passenger Services - U.S. Experience

Other than the intercity rail passenger service operated by Amtrak, rail passenger service in the United States is typically commuter rail service sponsored by a local government or agency. Table 6 arrays the access and operational characteristics of selected commuter rail passenger sponsors in the United States.

California Commuter Rail Services

Included on Table 6 are four sponsors of commuter rail service in California. They are: *Altamont Commuter Express* (ACE), North County Transit District (NCTD), sponsor of the *Coaster* commuter service in San Diego County, Peninsula Corridor Joint Powers Board sponsor of the *Peninsula Commute Service* (Caltrain), and the Southern California Regional Rail Authority (SCRRA), sponsor of *Metrolink* commuter service in the Los Angeles basin. Each agency utilizes a different method to perform the functions necessary to provide commute rail service. ACE contracts with UP to obtain access to UP's right-of-way and contracts with Herzog Transit Services Inc. (Herzog) to operate trains and maintain equipment. Caltrain and NCTD, which own their own tracks, contract with Amtrak to provide a "turnkey" operation, which means that Amtrak maintains the track and equipment as well as operates the trains. In other words, Amtrak provides all the necessary services. SCRRA owns its own tracks as well as uses those of freight railroads and NCTD to provide service. SCRRA has separate contracts with Amtrak, Bombardier and Herzog. Under these contracts Amtrak operates the trains, Bombardier maintains the equipment and Herzog maintains SCRRA's tracks.

Table 6

Access and Operational Characteristics Of Selected Rail Passenger Sponsors

				Maintenance Of	
Service Sponsor	**Location**	**Track Owner**	**Train Operations**	**Equipment**	**Way**
Altamont Commuter Express - *ACE-*	San Jose and Stockton, CA	UP	Herzog	Herzog	UP
North County Transit Development Board (NCTD) – *Coaster*	San Diego,CA	NCTD	Amtrak	Amtrak	Amtrak
Peninsula Corridor Joint Powers Board (PCJPB) *Caltrain*	San Francisco, CA	PCJPB	Amtrak	Amtrak	Amtrak
Southern California Regional Rail Authority (SCRRA) – *Metrolink*	Los Angeles, CA	BNSF, UP, NCTD & SCRRA	Amtrak	Bombardier	Herzog
Chicago Commuter Rail Service Board - *Metra*	Chicago, IL	BNSF, UP & Metra	BNSF, UP & Metra	Metra	BNSF, UP & Metra
Connecticut Department of Transportation - *Shoreline East*	New Haven and New London, CT	Amtrak	Amtrak	Amtrak	Amtrak
Massachusetts Bay Transportation Authority - *MBTA*	Boston, MA	MBTA	Massachusetts Bay Commuter Railroad (MBCR)*	MBCR	MBCR
Maryland Transit Administration - *MARC*	Washington, DC and Baltimore, MD	Amtrak & CSX	Amtrak, CSX	MARC	Amtrak & CSX
Metropolitan Transit Authority - *Metro North Commuter Railroad* (MNCR)	New York, NY	MNCR	MNCR	MNCR	MNCR
Metropolitan Transit Authority - *Long Island Railroad* (LIRR)	New York, NY	LIRR	LIRR	LIRR	LIRR
Northern Indiana Commuter Transportation District –NICTD	Chicago, IL	NICTD	NICTD	NICTD	NICTD
Sound Transit - *Sounder*	Seattle, WA	BNSF	BNSF	Amtrak	BNSF
Tri-County Commuter Rail Authority - *Tri-Rail*	Miami and West Palm Beach, FL	Florida DOT	Herzog	Herzog	Herzog
Trinity Railway Express - *TRE*	Dallas and Fort Worth, TX	TRE	Herzog	Herzog	Herzog
Virginia Railway Express - *VRE*	Washington, DC	CSX, NS & Amtrak	Amtrak	Amtrak	CSX & NS

* A consortium comprising Connex, Bombardier and Alternative Concepts, Inc.

Source: RLBA.

Other U.S. Commuter Rail Services

Some commuter rail sponsors perform all functions required to provide service with their own personnel. The Long Island Railroad (LIRR) and Metro North Commuter Railroad (MNCR), both of which are sponsored by the Metropolitan Transit Authority in metropolitan New York, are agencies that provide service by utilizing their own employees to perform all functions. The Northern Indiana Commuter Transportation District (NICTD), which operates in the metropolitan Chicago, Illinois area, is another example of an agency that performs all necessary functions with their own employees.

The Chicago Commuter Rail Service Board, operator of the *Metra* commuter rail service in Chicago, Illinois, utilizes a slightly different approach. Like SCRRA, *Metra* operates over its tracks and uses tracks of freight railroads to provide service. But unlike SCRRA, *Metra* uses both its own employees and the employees of the freight railroads through purchase of service agreements to operate trains. *Metra* employees maintain the equipment and track that *Metra* owns.

Amtrak is the turnkey operator of the *Shoreline East* commuter service sponsored by the Connecticut Department of Transportation. Until July 1, 2003, Amtrak was also the operator of the Massachusetts Bay Transportation Authority (MBTA) commuter rail service under a turnkey arrangement. The service is now operated by the Massachusetts Bay Commuter Railroad, a consortium of several private firms who entered into a contract with MBTA.

The *Maryland Rail Commuter Service (MARC*), serving the Washington DC and Baltimore metro areas, provides service on three separate routes. Two of the routes operate on right-of-way owned by CSX and the third route on right-of-way owned by Amtrak. Operations and maintenance of rights-of-way is performed by CSX and Amtrak based upon the ownership of the tracks over which the trains operate. *MARC* has separate contracts with CSX and Amtrak operations whose operations are independent of each other.

In Seattle, Washington, the *Sounder* commuter rail service sponsored by Sound Transit operates over right-of-way owned by BNSF, which operates the trains. Amtrak performs equipment maintenance.

The Tri-County Commuter Rail Authority (*Tri-Rail*) in southern Florida runs on right-of-way owned by the Florida Department of Transportation and has a turnkey contract with Herzog. The *Trinity Railway Express*, which runs on its own right-of-way between Dallas and Fort Worth, Texas also utilizes a turnkey contract with Herzog to operate its service.

Virginia Railway Express (VRE) which runs over Norfolk Southern (NS) and CSX tracks in the Northern Virginia suburbs of Washington, D.C. contracts out operations to Amtrak but contracts with the freight railroads to obtain track access. This is similar to the arrangement utilized by *ACE*.

Bidding

Most of the commuter services shown on Table 6 are provided by utilizing contractors whose services are obtained through a competitive bidding process to provide at least a part of the service. Where commuter rail service is provided over the tracks of a freight railroad, such as with ACE, the sponsoring entity will only seek bids on the train operations and equipment maintenance since the host railroad maintains the track structure and dispatches the trains. In locations where the commuter rail operator owns the track, such as is the case with Coaster and Metrolink, the rail operator will have to seek bids to cover not only train operations and equipment maintenance but also track maintenance. Coaster has chosen Amtrak and elected to utilize a turnkey operation while Metrolink service has evolved from a turnkey operation with Amtrak to one which utilizes separate contractors for track maintenance (Herzog), equipment maintenance (Bombardier) and train operations (Amtrak). The clear theme from those entities that we have interviewed is that a successful bidding process requires sufficient time to define goals, translate these into an RFP and evaluate bids.

Organizational Structures

All of the sponsoring entities provide an organizational structure to oversee the contract operator, including preparation of business plans. The size of the administration and intensity of the oversight varies according to the involvement that the sponsoring entity believes is necessary to secure conformance with contract requirements. Currently, Amtrak performs many day-to-day administrative functions for the California intercity services such as accounting, coordination of subcontractors, engineering support and insurance coordination. The Department is involved in the administrative function through its preparation of the business plans; participation in the marketing planning; bus contracting; schedule changes; and oversight of equipment maintenance,

renovation, overhaul and deployment. None of these are so unique that they could not be performed by a contractor other than Amtrak. The principal impediment to change would be to allow sufficient time to have a successful changeover from Amtrak to a new contractor.

Financial Characteristics

Table 7 arrays the financial and ridership characteristics of intercity and commuter passenger rail service in the U.S. As a review of Table 7 shows, California's intercity rail passenger services do not carry as many riders as most of the commuter rail operators. This is due to the fact, that in general, intercity services are oriented towards the long distance traveler and not the higher volume, commuter rail traveler. California's intercity services have a higher operating expense than commuter rail service on a per-trip and per-passenger mile basis. This is because intercity rail trips are usually longer and have a higher level of service.

However, the farebox ratio of California intercity rail service compares favorably with commuter rail. Farebox ratio is the measure of expenses that is covered by revenues (passenger fares). The average farebox ratio of the three California services is 44 percent, while the average farebox ratio of the 14 commuter services listed is 38 percent. In addition, the highest farebox ratio of any of the services listed, Metro North at 57 percent, is only 5 percent higher than the Pacific Surfliner's farebox ratio of 52 percent.

Liability

All of the entities, including commuter rail operators in California, have been able to negotiate liability language and coverage. Liability has not been a barrier to entry. For example, ACE provides UP with $100 million in liability coverage at a cost to ACE of approximately $1 million with a $1 million deductible. Additionally, BNSF felt confident that it would be able to assist California in finding suitable liability coverage if Amtrak were to cease operations and BNSF were to seek to contract with California to perform the train operating function in place of Amtrak.

Equipment Ownership

Commuter agencies generally provide the railcars and locomotives, as does California with respect to the *San Joaquin* and *Capitol Corridor* services and to some extent the *Pacific Surfliner* service. Rail passenger equipment is generally owned outright.

Table 7

Intercity and Commuter Passenger Rail Service
Financial and Ridership Characteristics

Passenger Service	Passenger Fares	Total Operating Expenses	Farebox Recovery	Annual Trips	Total Operating Expense Per Passenger Mile	Total Operating Expense Per Passenger Trip
Intercity						
Capitol Corridor	$12,200,000	$ 32,842,038	37%	1,079,779	$0.45	30.42
Pacific Surfliner	19,910,583	38,019,574	52	1,725,234	0.35	21.47
San Joaquin	19,453,950	47,152,137	41	734,236	0.41	64.22
Commuter						
ACE	4,492,564	8,323,405	54	918,761	0.21	9.06
Caltrain	22,788,298	64,945,741	35	9,925,201	0.29	6.16
Coaster	12,010,078	52,909,139	23	1,206,839	0.35	9.96
Long Island RR	360,215,267	769,863,508	47	101,923,000	0.36	7.49
MARC	96,470,409	311,803,191	31	5,816,975	0.28	8.45
MBTA	304,111,591	980,297,451	31	36,992,648	0.23	4.87
Metra	189,380,861	407,415,706	46	72,121,795	0.29	6.16
Metrolink	35,802,747	75,286,962	48	7,397,965	0.27	10.18
Metro North	338,768,896	597,605,764	57	2,185,376,033	0.26	7.91
NICTD	14,036,236	29,688,910	47	3,771,593	0.28	7.87
Shoreline East	3,199,013	14,847,232	22	288,750	1.17	26.51
Sounder	8,820,285	68,605,924	13	494,586	0.71	21.23
Tri-County	5,915,148	21,482,783	28	2,543,514	0.28	8.45
VRE	10,358,348	21,339,791	49	2,428,533	0.29	8.79

Sources: 2001 National Transit Database; San Joaquin and Pacific Surfliner FFY 2003-04 Business Plans; Capitol Corridor Business Plan Update FY 2003-04 - FY 2004/05. (For all intercity routes data is from 2001-02 year)

Lessons Learned

What can be gleaned from these examples is that there is no single preferred approach to contracting out to meet all services requirements. The contracting approach is strongly influenced by the particular characteristics of a service, in particular - the terms of the agreement under which the service obtains access to the right-of-way and other facilities. Typically, the owner of the right-of-way maintains the track and performs the dispatching function under the terms of the access agreement. BNSF has recently implemented a policy under which it will also provide train crews in those instances where it provides access. Thus, the type of contract that a new entrant enters into is greatly influenced by the access agreement with the owner of the right-of-way.

Entering into a turnkey contract can simplify both the overall contracting process and contract oversight since the contract is in the hands of a single contractor. However, there might be skills or cost savings that are unavailable where a turnkey contract is chosen as opposed to entering into contracts with several contractors to perform different functions. However, as the number of contracts is increased, contract management and oversight expenses might well increase and coordination problems among contractors increase burden on the contracting agency.

As to intercity rail passenger service, there is no service comparable to the service sponsored by California. Some states, New York is an example, have funded some capital projects and equipment. Other states have entered into service contracts with Amtrak under which a subsidy is paid to Amtrak to operate a very limited service such as the Vermonter, which consists of a daily roundtrip between St. Albans, Vermont and Springfield, Massachusetts and Ethan Allen Express which consists of a daily roundtrip between Rutland, Vermont and New York, New York.

The crucial point to be made is that the terms of any contract must be tied to service goals in such a manner that a contract can be easily and efficiently monitored with payments tied to performance.

Competitively Bid Passenger Train Services - International Experience

With the exception of the United States, railways around the world since World War I for the most part have been managed and operated by government organizations. This is in spite of the fact that much of the rail infrastructure was originally built and the services were operated by the private sector.

For a variety of reasons, the railways were nationalized during the 1940s and 1950s and remained nationalized until the late 1980s. At the end of this period of time, many governments decided to privatize their railways. However, it is interesting to note that at this same time passenger services in the United States and Canada were being absorbed by public sector organizations.

The first wave of privatization began in the late 1980s, with Argentina being the pioneer. The effort was initiated because Ferrocarriles Argentinos (FA) had become the largest drain of financial resources in the country. The choices were simple, shut down the railroad or drastically reorganize the entity. Other South American countries were experiencing similar problems. Many governments, with the support of the World Bank, chose to reorganize and after an exhaustive process of resolving legal, labor and financial issues.

European railways were facing similar financial problems, although not of the magnitude experienced in South America. However, in Europe, in general the economic performance of freight was worse than passenger. Given this and other fundamental differences, European railways adopted different approaches to privatization or concessioning them in South America. Other countries, including Australia, Japan and Sweden also initiated a rail privatization process. In all cases, different conditions in each of these countries required different solutions.

The experience of each relevant country in privatizing or concessioning passenger rail service is described below and summarized in Table 8. The countries are listed in alphabetical order.

Argentina

The railways of Argentina were originally built and developed by European firms, primarily British. Both freight and passenger services were offered on over thirty thousand miles of rail lines.

In the early 1950s, the powerful right wing government of Juan Peron nationalized most private sector utilities, including the railways. FA was born, assuming ownership of all assets and the responsibility of maintaining and operating both freight and passenger services.

Soon after, it became obvious that rail transportation was quickly becoming a symbol of national sovereignty as opposed to a productive business organization. Over the next four decades several large investments were made, producing short term, sporadic improvements in service but in general, the system was grossly mismanaged and the situation reached a critical stage at the end of the 1980s. Out of a fleet of over 1,000 locomotives, 43,000 freight cars and 3,000 passenger cars, more than half were inoperative. Tracks and critical systems, such as signaling and communications, were almost in condemnable condition and services were provided on a non-scheduled basis. In 1991, FA employed 96,000 and was losing $2 million per day.

In 1991, with financial support of the World Bank, a study was conducted to determine the feasibility of privatizing some or all rail services. This was part of a wider scope to privatize most utilities under the control of the public sector, including telephone, electricity, water supply, highways and airlines, among others.

A number of options were examined, exploring the type and form of the contracts, the duration and the overall conditions and requirements to be imposed on the contractors, such as investment and performance. Handling of freight and passenger services and existing labor contracts and conditions were issues carefully reviewed and evaluated.

The analysis of the potential options was based primarily on a business model proposed by the World Bank, while other issues, such as social and political conditions were on the next tier of considerations. Not surprisingly it was determined that passenger services, particularly intercity, did not meet the commercial criteria, and therefore, were left to be dealt with later between the Federal and Provincial or Regional governments.

However, commuter rail services in the Buenos Aires metropolitan area were found to have the potential to cover all operating costs and a portion of capital costs. The local subway system also was found to meet the commercial criteria established for concession contracts. These rail passenger services were included among the offering packages, separate from freight franchises.

Along with analysis of commercial issues conducted with the financial and professional support of the World Bank, the team also evaluated existing laws and the capabilities expressed by the private sector. The process adopted included the following general conditions:

- the Federal government will retain ownership of all assets, including fixed facilities and rolling stock;
- the contract/concessions were to include rehabilitation, operations and maintenance, with progressive levels of investments over the life of the contract; and
- the freight operators were to have control of the tracks, signaling and communication systems but had to allow their use by passenger service operators, at a reasonable cost.

Given that most freight services were deemed commercially feasible, the process began in 1991 and completed in 1996.

With regard to rail passenger services, the Federal government concluded that the commuter and subway services in the Buenos Aires metropolitan area met the commercial criteria by recovering operating costs and a portion of capital investments. Therefore, it justified support of service continuance through a combination of public and private participation. Key specific conditions attached to the concessioning process were:

- interested parties were to bid implementation of a given program of rehabilitation which the Federal government specified and would fund;
- bidders were to propose increasing services;
- bidders were to propose fares and request, if required, subsidies to cover operating costs. The bidder proposing the lowest subsidy, if any, had an advantage in being selected;
- bidders were to propose an incremental level of capital improvements, over the duration of the concession, in addition to the capital investment funded by the government;
- the duration of the franchise was to be fifteen years and
- the selection criteria included credits to those proposing to hire FA/SUBTE (Buenos Aires subway) personnel.

The selection of the successful concessionaire was made based on criteria that included lowest initial proposed rehabilitation cost of the system (to be paid by the government); the level of services proposed; the lowest operating subsidies, if any; and highest investments (by the concessionaire) and service improvements to be made during the life of the concession.

Four commuter passenger rail concessions in the Buenos Aires metro area were awarded in 1996, namely:

- Trainmet, operating the ex-San Martin, Belgrano North and Roca lines;
- Trenes de Buenos Aires, operating the ex-Sarmiento line;
- Ferrovias, operating the Belgrano Sur line and
- Metrovias, operating the subway system and an extension of the Urquiza line.

Technical and commercial packages were prepared with respect to each of the services offered under the concession program. The packages also included the basic terms and conditions that will govern the contracts, including performance standards, safety and security issues, subsidies (if any) and capital investments. A secondary issue was the number of existing FA employees to be hired by the new operator, however there were no mandatory numbers established. With regard to this issue, the World Bank had already committed to fund the retraining and re-employment of displaced workers, a major concession by organized labor, removing a huge stumbling block from the process. The team, visited key international financial and transportation centers. The interest was significant and the bidding process got underway.

The potential economic performance of intercity passenger services, on the other hand, could not support any further investment by Federal authorities. It was also recognized that there was no interest by the private sector. The Federal government, therefore, concluded that, if any service was to be provided, it was to be the responsibility of the provinces, individually or in a group. As a result, almost all intercity rail passenger service was discontinued.

Lessons Learned

There is general consensus among industry and government leaders that the model adopted for freight rail in Argentina is sound, technically and commercially realistic. The current crisis with the concessions and the services provided is not necessarily related to the concessioning process but impacted by external issues caused by the financial crisis affecting Argentina. The model was proven during the first few years of operations, when both freight and commuter rail passenger services enjoyed significant improvements in almost every aspect of business, including reliability, safety, increased cargo, ridership and income.

Passenger rail services, which had been heavily subsidized by the national government when owned by the government were largely passed over during privatization by the new operators who concentrated on freight service. Private operators declined to

provide long-distance rail passenger service due to the prospects of heavy losses. Commuter rail service exists in the Buenos Aires, Río Negro and Tucumán provinces as a result of the payment of subsidies by the provinces to the operators. Since most provinces in Argentina cannot afford to subsidize the operation and fund the required capital investment, rail passenger services are limited to the few locations. The lesson learned from Argentina is that the government must be prepared to subsidy rail passenger operations and investment and recognize that the amount of the subsidy will have to reflect current economic conditions.

Australia

Australian national rail reform programs during the 1990s involved a number of overlapping stages aimed at reform of:

- governance structures, by corporatization and privatization;
- competitive access to rail infrastructure;
- rail safety regulation through accreditation of owners and operators;
- infrastructure management and performance;
- operating practices and standards and
- risk management practices.

Ultimately, the aim has been to facilitate improvements in the quality and reductions in the cost of service to rail customers. Other than in relation to competitive access, the focus of national reforms has been on interstate movement of freight and to a lesser extent rail passenger movement.

A number of principles have consistently guided national rail reform:

- there should be a cost-effective, nationally consistent, approach to rail safety. Rail safety should be achieved by co-regulation through performance-based standards and mutual recognition between jurisdictions;
- there should be no barriers to entry by third party operators;
- technical and commercial innovation should be facilitated, consistent with safe practices;
- there should be uniformity, over time, of operating, technical and safety standards and practices;
- the Defined Interstate Rail Network should be managed as a single system, with seamless operations and a single process through which access is obtained and

- there should be seamless access and operations between the Defined Interstate Rail Network and non-interstate track.

Typically, passenger rail services are the responsibility of state and territorial governments. In all states, except Queensland, the freight portion of the rail system has been privatized.

In New South Wales (NSW), the infrastructure is state-owned and maintained. The urban rail passenger operator is also state-owned and operated but some of the major maintenance work has been privatized. The regional rail passenger services are largely state-owned, operated and maintained. There are some private operators who cater to the tourist market and some of the interstate market. NSW pays it's passenger operator, StateRail, a subsidy which is referred to as a Community Service Obligation (CSO).

Queensland was the last vertically integrated rail operator with state-owned, operated and maintained infrastructure, passenger and freight systems. Recently, arrangements have been changed to allow third party access to the Queensland network. Queensland, like NSW, has state-owned passenger service operators who are supported by CSOs and other forms of subsidy.

South Australia (SA) established a regional transport agency centered on its capital city, which, in turn, contracted for the provision of public transport services. TransAdelaide, the previous state-owned operator, was awarded the rail passenger service contract, which included the payment of extensive CSOs from SA. TransAdelaide did contract out the rolling stock maintenance to private contractors.

Victoria took a different route in the late 1990s and fully privatized its freight railway and then tram and urban rail passenger systems by creating operating franchises in a somewhat similar way to Great Britain. However, there was one fundamental difference; the urban passenger franchises were vertically integrated, with the franchisee responsible for track, stations and trains. Two suburban passenger trains, two tram and one intercity/regional passenger franchise were created in August 1999. These complemented the privatization of Victoria's freight rail business in 1998.

Both Queensland and NSW have state-owned passenger service operators who are supported by CSO and other forms of payments. In Queensland, the operator (QR)

recently became vertically separated from the right-of-way even though the Network Access Group is still part of QR. The operator in NSW (StateRail) also has been separated from the right-of-way since 1996 but will be reunited with the infrastructure beginning January 2004 because of concerns over communications and decision-making when operations and infrastructure are controlled by separate organizations.

In Victoria, the right-of-way was included as part of each passenger franchise, with the exception of the country rail network which was included in the sale of the freight business. Franchisees have the responsibility to maintain their own infrastructure, which is to be returned to the state at the end of their franchises. The tram and passenger train franchises varied between seven and fifteen years in duration. The lease of the country rail network to the former freight business now owned by Freight Australia (owned by Rail America) extends over 45 years. The infrastructure is to be returned to the state in the same condition as when taken on lease, or better.

It is perhaps most productive to concentrate on events in Victoria, although WA went through a similar process in the sale of its freight rail business and country rail network. The privatization was intended to save $1.2 billion in reduced subsidies over the lives of the franchises.

A body called the Transform Reform Unit (TRU) was formed within the Victoria Department of Infrastructure. The TRU consulted widely with all stakeholders, including potential franchisees, financiers, unions and government departments, to create the framework to be used to govern operating franchises. In some instances, external experts were used to advise on likely specifications and costs of new and refurbished rolling stock, infrastructure improvements, etc. As let, the franchises required new rolling stock to be added to the system within five years of their commencement both to accommodate expansion and to retire older rolling stock. Infrastructure improvements also were required as part of the franchises.

The Victorian government initially solicited Expressions of Interest internationally, which attracted half a dozen consortia as potential bidders. Typically, each consortium had an operator, a financier, a rolling stock maintainer and an infrastructure maintainer, although some consortia contained organizations that could perform more than one role.

Franchising in Victoria stumbled in some aspects by creating a situation in which the short listed bidders were motivated to inflate their estimates of increased patronage and, therefore, reduce the subsidy sought from Victoria over the life of the franchise. As a result, bidders understated subsidy requirements to a degree that serious financial problems resulted. National Express of the United Kingdom was successful in winning one suburban train, one tram and the country rail franchise. Three years later, National Express handed back all three franchises and walked away from $100 million in security deposits to avoid future losses. The Victoria government is now running the former passenger services while negotiating with the other to take over the service.

Western Australia (WA) also established a regional transport agency centered on their capital cities, which, in turn, contracted for the provision of public transport services with TransPerth, the previous state-owned operator. The contract requires the payment by WA of a CSO to TransPerth.

Lessons Learned

Although franchising did generally improve the on-time performance of rail passenger service, partly due to an extensive and onerous penalty payment regime in the contract, and investment in new rolling stock, all the passenger services, both urban and regional rail, required the payment of extensive CSOs by the states and territories to make them attractive to attract bidders. In Victoria, for example, where short listed bidders were motivated to inflate their estimates of increased patronage and, therefore, reduce the subsidy sought over the life of the franchise in order to gain the franchise, bidders understated subsidy requirements to such a degree that serious financial problems resulted. The losses stemmed from totally unrealistic ridership and revenue growth projections at the time of bidding.

Brazil

The Brazilian Railways, under the umbrella of the Federal government, operated freight and passenger intercity services and some commuter services, primarily in the Rio de Janeiro metropolitan area. Rail transportation services in Brazil reached the same chaotic situation as with many other places around the world. Decades of neglect, poor management, bloated and inefficient staff and lack of meaningful investments contributed to the critical situation.

With the advantage of observing the process in Argentina, the Brazilian government, again with the assistance and guidance of the World Bank, adopted the same basic

model as Argentina, namely separating the freight from passenger services and concentrating its efforts on the first. Passenger commuter rail and transit services in the Rio de Janeiro area also were included in the concessioning package, while passenger services in many other metropolitan areas such as Sao Paulo, Belo Horizonte and Recife remained under the control of local and Federal authorities.

Intercity services were very limited, providing an almost meaningless level of operations. Recognizing the potential market for passenger services between Rio de Janeiro and Sao Paulo, a private concessionaire experimented in the late nineties with overnight, intercity trains between the two cities. Unfortunately, lack of needed investments and the poor condition of the infrastructure rendered the effort unsuccessful.

In the early 1990s, Brazil developed and packaged seven solicitations addressing the rehabilitation, maintenance and operation of freight services. One of the major differences between the Brazilian and the Argentinean process was that the successful contractors were to pay up front for the rights to use the assets. The contracts were also more flexible in terms of allowing adjustments during the life of the concessions.

In addition, two solicitation packages were developed covering the concessioning of rail passenger services, namely the commuter service and the subway system, both in Rio de Janeiro. Contracts were awarded in 1997 to:

- Supervia, to operate the commuter service in Rio de Janerio and
- Oportrans, to operate the Rio de Janeiro Metro.

Lessons Learned

The Brazilian model, as regards to freight rail service, also can be declared generally an appropriate approach to the specific needs and conditions prevailing in the region. Brazil's financial situation did not suffer as much as Argentina, nevertheless issues related to national politics and the financial situation in that country have constrained the orderly evolution and potential of the contracts. In summary, the private sector has demonstrated, through sound business approaches, that the model for freight and some commute rail is sound and workable.

Table 8

International Privatization/Concessioning Of Rail Services Summary

COUNTRY	PROCESS ADOPTED	LESSONS LEARNED
Argentina	♦ 25 year concessions for freight, commuter rail and subways ♦ Assets remain the property of the State ♦ Freight concessionaires pay a fee to the government over the life of the contracts and receive no subsidies.	♦ Intercity passenger rail not part of process ♦ Services improved dramatically in the first three years of the concessions. ♦ Commuter Passenger ridership doubled quickly. ♦ Concessionaires made investments and paid taxes. ♦ Contracts are being renegotiated to adjust to economic realities.
Australia: Victoria Passenger Services	♦ Passenger franchises vertically integrated, including infrastructure and rolling stock. ♦ Incentive pricing required. ♦ Franchise durations varied between 7-15 years. ♦ New rolling stock required within 5 years, also infrastructure improvements.	♦ Unrealistic owner expectations regarding level of subsidy motivated overly optimistic proposals with subsequent inability to attain. Winner of three of five franchises walked out after three years rather than continue to bear losses. ♦ Process split the network into two parts without creating competition. Result was two small, weak franchises rather than one larger, possibly healthier. ♦ Two franchises introduced very different rolling stock, creating maintenance integration and cost issues for years to come.
Brazil	♦ Freight services and commuter and subway services in Rio de Janeiro were concessioned. ♦ Assets remain the property of the State. Concessionaires paid a fixed upfront fee for the use of the assets.	♦ Intercity passenger rail services not part of the process. ♦ Freight and commuter Services improved dramatically. ♦ Freight connections with Argentina, Chile and Bolivia improved. ♦ Rationalization process begun to take place after the second year of operation.
Chile	♦ Freight services on the south line were concessioned. Assets remain the property of the State. ♦ The entire assets of Ferronor, the northern railroad, were sold outright. ♦ Rail passenger services not concessioned.	♦ Intercity passenger rail services not part of the process. ♦ Both the sale and concessioning of the freight services brought along the expected results. ♦ The government's insistence on no subsidy has made the intercity passenger and commuter services unsuitable for concessioning.

Table 8
(Continued)

International Privatization/Concessioning Of Rail Services Summary

COUNTRY	PROCESS ADOPTED	LESSONS LEARNED
Great Britain	♦ Separate infrastructure, operating and rolling stock companies were created. ♦ Passenger and freight services are managed and trains operated by franchised private companies, but passenger service is still subsidized. ♦ Track maintenance, timetabling and signal and control center operation were Railtrack's responsibility, but it has been replaced by Network Rail, a not-for-profit company.	♦ Loss of institutional and individual knowledge during the transition. ♦ Railtrack, the infrastructure steward, was unable to balance infrastructure needs with for-profit operation, with resultant safety and capacity problems. ♦ Railtrack replaced with not-for-profit Network Rail ♦ Strategic Rail Authority formed and stricter regulatory control assured.
Germany: State of Schleswig-Holstein	♦ All local rail services out to tender within 10 years. ♦ Local services depend on federal grants, guaranteed through 2007. ♦ Rail infrastructure not to be put out to tender. Holding company to permit operators equal access to the network.	♦ 23% of the Schleswig-Holstein annual train miles have been competitively tendered. ♦ New Schleswig-Holstein operators are more efficient than DB AG. ♦ Passengers have benefited from better connections and increased service.
Japan	♦ Breaking up the old JNR into six passenger operating companies (JRs) ♦ Assets remain property of the State ♦ Debt is paid by the sale of surplus real estate properties	♦ Competition between new JRs and existing private RRs produced significant efficiencies and better quality of services ♦ Assets remain property of the State ♦ Real estate properties did not sale as planned and debt has increased
Mexico	♦ Three freight networks were created and concessioned. ♦ The successful bidders were asked to pay a fee upfront for the use of the assets. ♦ Operators are required to make continuing investments.	♦ Intercity passenger rail services not part of the process. ♦ Increasing NAFTA trade created both a need for improved freight service and the conditions for successful freight privatization. ♦ The process has been very successful. ♦ Commuter rail services in the Mexico City area may be next.
Sweden	♦ First to adopt the separation of infrastructure and operating services ♦ Intercity passenger services were awarded to SJ, the old railway organization, but formed as a for profit corporation ♦ Assets remain the property of the State ♦ State continued to subsidize unprofitable passenger service	♦ Greater efficiencies caused service to improve greatly. Later, lack of committed investment by the Government and other issues not related to reform have caused a very difficult financial situation for SJ. ♦ The government continues to work on additional reforms, always maintaining the concept of privatization.

Intercity passenger services which were not extensive before privatization are virtually non-existent today. Brazil continues the search for a suitable model that will allow developing intercity passenger services, but the objective does not appear promising at the present time.

Chile

While Chile has successfully addressed the issue of freight rail services, it has not progressed far in addressing commuter and intercity rail passenger services. Nevertheless, a significant difference with the process utilized by Brazil and Argentina is that one of the two freight lines was sold outright, including all infrastructure, fixed facilities, rolling stock equipment and service rights.

The Federal government continues to operate limited intercity passenger and commuter rail services and continues to work on the development of a formula to guide the privatization or contracting of rail passenger services without Government subsidy. Government insistence that there be no operating subsidy makes the services unsuitable from the perspective of private sector individuals.

Lessons Learned

Government insistence that there be no operating subsidy makes rail passenger services unsuitable from the perspective of private sector individuals.

Great Britain

The first railways began service in the 1830s and the system developed rapidly thereafter. Originally, many separate companies operated railways, but consolidation occurred from the 1840s onwards, culminating in the Railways Act of 1921, which amalgamated virtually all railways in Great Britain into four regional companies. On January 1, 1948, the four railway companies were nationalized. The railways initially were operated by the Railway Executive, a part of the British Transport Commission (BTC) but were later operated directly by the BTC.

The Transport Act of 1962 abolished the BTC and established a British Railways Board (BRB) to provide railway services in Great Britain. Against a background of declining traffic levels and increasing payroll costs, losses were experienced which necessitated capital restructurings in 1962 and 1968. The capital reconstructions took place against the background of the Beeching Report, which recommended the closure of

approximately one-third of the existing route network and the development of improved freight and passenger services between major centers.

The Transport Act of 1968 included provisions to handle separately socially important services that were not self-supporting and provided revenue support on an individual basis of certain non-remunerative services.

The Railways Act of 1974 established new methods of supporting BRB's passenger services. The individual grants in connection with non-remunerative services were replaced by Public Service Obligation grants. The Secretary of State for Transport also placed an obligation on BRB to continue to operate its passenger system so as to provide a public service broadly comparable with that then provided.

The BRB was privatized during the mid-1990s after extensive discussions and controversy.

The UK Government looked at a number of options in developing its privatization proposal. One set of options included a range of open access schemes whereby a number of operators would provide competing services on the same line. Another alternative considered was the re-introduction of private regional companies, on a similar basis to that adopted in 1921.

The Government published its formal proposal to privatize British Rail in a 1992 White Paper. The paper contained the following key features regarding the privatization of the railway industry:

- BRB track and infrastructure would become the responsibility of Railtrack, a new property company and track authority that would carry out all physical works through contracts. Railtrack also would plan the timetable and operate the signaling and control centers - original plans to require the train operators to set up joint ventures to do this were not progressed;
- existing passenger services would be managed and the trains operated by the private sector through a system of franchising;
- Rights of access to railway lines would be available to private passenger operators without a franchise, including franchisees operating outside their franchise areas;
- a Rail Regulator would be appointed to oversee access rights and charge mechanisms;

- rail freight and parcels operations would be transferred entirely to the private sector and
- the private sector would have the right to purchase or lease stations. Otherwise, station leases would be included in franchises.

Passenger routes were divided into 25 franchises which were separately bid and awarded to Train Operating Companies (TOCs). Competition among the TOCs was almost non-existent because few TOCs served duplicate origin-destination pairs.

The White Paper resulted from a lengthy review of the UK rail industry by the Government. While that review was being conducted, the EU also was focusing upon the future of rail transport from a pan-European perspective.

In 1991, the European Community adopted Council Directive 91/440 on the development of the Community's railways with the aim of adapting them to the needs of the European Single Market and increasing their efficiency. The Directive sought to achieve those aims through establishing greater management of railway undertakings and economic independence from member state governments by:

- Requiring accounting separation of the management of railway infrastructure from the provision of railway transport services;
- Taking measures to help reduce the indebtedness of publicly owned or controlled railway undertakings to a level which does not impede sound financial management and
- Ensuring access to infrastructure by railway undertakings engaged in the international combined transport of goods.

In Great Britain, the provision of network infrastructure was separated from train operations to encourage the entry of open access commercial operators. However, there are situations in which a subsidy may be necessary to ensure that socially desirable services are provided, especially if account is taken of negative externalities associated with road congestion.

The Rail Regulator has faced a difficult task of balancing conflicting objectives – costs, delays, fares and safety. Since privatization, the industry has developed with less competition between train operators than had been expected, infrastructure costs have risen alarmingly (while reliability has declined) and the need to provide high subsidies seems to be increasing.

Many of the labor conditions were determined by European legislation regarding the transfer of employees (TUPE), although labor organizations did lobby successfully to insert additional safeguards regarding pensions.

The process was taken forward through complex legal means which set up over one hundred legal entities which had networks of linked contractual relationships. Once the framework was established, individual companies were sold, franchised or licensed through a normal financial process involving banking and legal advisors. Railtrack was sold via a public rights issue. Freight operating companies were mainly sold via a tender process to a U.S. railroad, although one involved a management buy-out, while the passenger TOCs were transferred to franchisees.

Wherever possible, competitive processes were adopted designed to obtain the best possible return to the government, although only single tenders were received in connection with two of the three rolling stock companies and around half of the infrastructure contractors. Many of those companies were later sold by the original purchasers for very substantial profits, e.g., $350 million on an initial outlay of $700 million in eighteen months.

Lessons Learned

There are many lessons to be learned from the British experiences. The following are just a few of the principal lessons:

1. Lack of contractual transparency: this led to difficulties defining responsibility and in achieving improvements in safety, performance and efficiency;
2. Undefined asset condition: physical and financial knowledge of assets was lacking, preventing effective decision-making. Even now, there is no comprehensive infrastructure asset register;
3. Loss of competency: there were mismatches of staff competencies and assignments in the organizations resulting in poor organizational performance. There was also a significant loss of expertise through early retirements, layoffs and departures from the industry due to disenchantment with the process;
4. Lack of common goal: the framework and contracts selected resulted in a number of conflicting objectives and, as a result, industry players did not work toward a common goal and
5. Loss of focus: Railtrack was launched on the stock market on the basis that it was a property company, not a regulated utility. This caused serious internal

problems with priorities and funds allocated to activities such as asset maintenance. Eventually, following catastrophic fatal accidents related to asset condition, Railtrack was dissolved and replaced by Network Rail, a not-for-profit company owned by stakeholders.

Since privatization, major problems have been experienced in terms of right-of-way maintenance, train service quality and financial performance. On the positive side of the ledger, passenger-miles increased 36 percent between 1994 and 2000, with much of the growth occurring after franchises were awarded in 1996 and early 1997. TOCs were credited with improving marketing, stations and customer relations.

Performance problems persist, as witnessed by the June 27, 2003 decision of governing body, Strategic Rail Authority (SRA), to terminate the South Eastern rail franchise held by Connex Transport UK no later than December 31, 2003. SRA's announcement stated that the action was taken to protect taxpayers' money and passenger delivery. SRA reportedly was concerned about overall financial management and failure to execute a program of improvements rather than operational competence, although recent reports indicate that one in five South Eastern trains ran late. Two years ago, Connex became the first TOC to lose a franchise when a competitive bidding process led to another operator being selected to assume the South Central franchise operated until that time by Connex.

Germany

Following the political reunification of Germany, the commercial activities of the West German Deutsche Bundesbahn, the East German Deutsche Reichsbahn and the Railway Property company in West Berlin were unified under the Deutsche Bahn Aktiengesellschaft (DB AG). This is a public liability company, with the Federal Republic of Germany as the 100 percent shareholder. It began operations on January 1, 1994.

DB AG chose to separate the various operational activities into business units, each responsible for their own financial performance. On June 1, 1999, the five principal business units became independent joint stock companies, with DB AG as the holding company:

- DB Reise & Touristik AG (Long Distance Passenger Traffic);
- DB Regio AG (Regional and Urban Passenger Traffic);
- DB Cargo AG (Freight and Operations);
- DB Netz AG (Infrastructure and Railway Construction) and
- DB Station and Service (Passenger Stations).

Partial or total privatization was a stated eventual objective at the time DB AG was set up and is now considered more likely to advance significantly after 2004. The process of regionalization and privatization of railway lines has begun, although private railway operators currently operate less than five percent of the German rail transport service. Most of the private operators are active in local and regional public transport businesses, which are still subsidized by the German government (US $6.7 billion subsidy in 2003). However, there are a few open access operators, including Connex, which provide limited long-distance services, generally serving smaller cities by-passed by new high-speed lines.

From the beginning of 1996, financing responsibility of local services passed from the Federal government to the 16 regional governments (the Länder). The Federal government provided additional funds equal to their earlier direct subsidies to DB AG but it was left to the Länder to decide how to use the funds. Options available to the regional governments included continuing to obtain services from DB AG, contracting with an independent railway operator to run a service at a lower price than DB AG, purchase of the infrastructure itself from DB AG to set up their own activity and replacing train services with bus services.

One of the key themes in providing the Länder with the decision making power was to encourage competition to force DB AG to develop a more customer-orientated culture and to be more cost effective in their operations. For example, Schleswig–Holstein, Germany's most northern Province, launched a comprehensive network of regional train services in late 2002. A policy of competitive bidding has yielded early success and contract operators now provide nearly one-quarter of the fifteen million train miles operated annually.

Schleswig–Holstein is only now beginning to work steadily through a program of putting all local rail services out to competitive tender, with all tenders to be issued within the next ten years. By 2014, the objective is to have all local rail services in Schleswig–Holstein operated by companies that have competed to run the service in an open

tendering process. Bids will be sought for sections of the network well in advance of the start-up date, ensuring that operators have sufficient time to plan and put together investment proposals.

The Länder rely on financing from the Federal government to ensure that they can fund local transport. Early in 2002, the Federal government was seeking to freeze payments but, after negotiations, both houses of parliament agreed to accept a compromise under which the Länder receives US $6.75 billion per year to support regional transport using funds raised from fuel taxes. Significantly, the amount will increase by 1.5 percent every year from 2003.

In terms of rail infrastructure, the Federal government has made it clear that the rail infrastructure will not be put out to tender but will be retained in a holding company. The company is charged with ensuring that operators have access to the network under equal conditions. Some parties question whether access conditions will, in fact, be equal given the historical ties between DB's infrastructure and operating units.

Lessons Learned

To date, the regional governments are only beginning to put local and regional passenger services out to bid. With leaner staff structures, the new operators are considerably more efficient and cost effective than DB AG, the monopoly organization they have replaced. To-date, the main beneficiaries of the competition policy have been passengers, now enjoying better rail passenger connections, higher standards of service and better value given the fares paid. However, the Federal government has had to create a steady source of funding to support passenger rail service. At the present time, a longer-term assessment is required to determine the long-term impact on subsidy requirements.

Japan

As with many countries around the world, problems resulted from ever increasing government subsidies – approximately $2 billion in 1985, such as inadequate fare adjustments due to government control" and the introduction of high speed trains that required higher infrastructure maintenance costs.

In 1987, the government decided to implement reforms in order to make the rail system more efficient and competitive. The reform consisted of dividing the railway into several distinct groups and privatizing them. The Japanese National Railways (JNR) was

broken-up into six regional passenger companies (JRs) and one nation-wide freight company. The territory assigned to each regional passenger service was based upon the distribution of demand, allowing the new management to employ sound business practices based upon the particular demand characteristics of a region. In some instances, profitable lines were linked to unprofitable rural services in order to balance the financial obligations.

The financial performance of the JRs improved significantly in a relatively short period between the start of privatization in 1987 and 1990, due primarily to better labor -management relations and a resulting improvement in productivity. The quality of the services also showed significant improvements. These achievements clearly indicate the results of an organization managed by the private sector, unencumbered by political agendas.

Competition was another factor promoting the improved performance of the services, brought along by privatization. The new JRs now compete with private railways that provide a benchmark for their performance. The JRs then establish stringent targets as their own goals. These efforts by the JRs are also showing positive results in market share, becoming more responsive to passenger needs and providing better quality of services, especially on commuter lines where a strong competitor is offering similar services. The private railways, which existed in Japan prior to the establishment of the JRs, vary in size and service area served. The private railways have been able to prosper as a result of coordinated development of their property along the right-of-way so as to provide additional ridership and revenues to the passenger services that are offered.

However, some problems remain. The immense debt left by the old JNR was supposed to be largely repaid from the proceeds acquired from the sale of surplus real estate properties. The envisioned sales prices were not fully realized and the amount due of debt continues to grow as interest on the unpaid debt continues to accrue. Further, the decline in the economy has adversely affected the financial performance of the JRs. More recently, the government has been trying to develop alternative long term plans to cure the problem.

Lessons Learned

In general, the benefits of the privatization process outweigh the alternative of a government takeover. The difficulties encountered are not necessarily all caused by the

reform, but in-part by Japan's economic problems. However, the government is still subsidizing the passenger services that it privatized and will in all likelihood be required to do so for the foreseeable future. Private railway operators have been able to make a profit where they have been able to take advantage of land development and generate the necessary ridership.

Mexico

Mexico has completed the privatization of freight services and continues to pursue the concessioning of rail passenger operations. As in the cases of other Latin American countries, rail passenger services were found difficult to deal with, primarily due to economic issues. Mexico then proceeded to package the freight services across the nation. The process was similar to that in Brazil, requiring the successful bidder to make an initial capital investment, plus additional, increasing investments over the life of the concession.

With regard to passenger services, intercity operations were very limited at the time of the studies and have been further reduced since. The public sector continues to search for a method under which the private sector can participate but it is unlikely such objective can be reached. Commuter services on the other hand offer a greater potential to attract the private sector, especially in and around the Mexico City metropolitan area. At the present time, an invitation seeking expressions of interest is circulating, with a good response expected.

Lessons Learned

Although the success of the freight concessions in Mexico is remarkable, intercity and commuter passenger rail did not receive the financial support of the government. The lesson for passenger rail in Mexico is that without government support, passenger rail service will be eliminated.

Sweden

In 1988 Sweden was the first country in the world to separate the ownership of the rail infrastructure from rail operations and deregulate its railway. Banverket was formed to administer the rail infrastructure while the State Railway organization, SJ, maintained the responsibility for operations of intercity passenger and freight trains.

Within Banverket, two organizations were created to administer various aspects of railway operations, namely the Railway Inspectorate, an inspection authority for all rail

traffic throughout the country, and the Rail Traffic Administration, which has responsibility for determining train timetables for those rail companies that are entitled to operate services on the railways.

The right to operate intercity passenger trains on state-owned infrastructure is primarily restricted to SJ, except for commuter and regional services, where local authorities have access rights. Domestic rail freight services are, on the other hand, essentially deregulated.

The primary objective of the 1988 Reform Act was to transform rail operations into an efficient, customer oriented and profitable enterprise. While Banverket was given the responsibility for building and maintaining the rail tracks, SJ was assigned the responsibility for operations, but with the same freedom, in commercial and managerial terms, as possessed by private firms.

In cases where passenger rail services are unprofitable, but required to be provided, the State will subsidize the services. Commuter and regional services are also subsidized by the respective authorities. This particular market sector is open to competition from potential operators.

In the early years of operation the economic results were positive. For instance, from a loss of $122 million in 1988, SJ generated a profit of $72 million in 1995. The key to this success was that the government allowing SJ to rationalize and optimize operations. In the mid-nineties, SJ was considered to be the most efficient rail system in Europe.

More recently, the lack of a commitment by the government to continue to investment in the rail infrastructure, as well as the incorporation of the requirements of the Rail Net Europe (RNE), formed by eighteen European railways for the purpose of cooperating in the development of common marketing and sales for international trains, into the process have creating a very difficult financial situation for SJ.

Lessons Learned

The general consensus is, however, that with further reforms, including the possibility of opening passenger services to open competition as pursued by the EU, to reflect economic realities, the model is worth continuing. However, it is likely that privatization of passenger rail service will not occur without continuation of government subsidies.

California Passenger Study
Part II: Evaluation and Recommendations Under the Current Environment

Amtrak Continues to Operate

Foreword

This report is the second in a series of four collectively entitled *Intercity Passenger Rail Competitive Bidding and Service Options Study* which were awarded by the California Department of Transportation (Caltrans) as Caltrans Agreements 75A0179 with Notice to Proceed given on April 2, 2003.

Part I, provided background information on Intercity Passenger Rail. This report, Part II, provides an evaluation and recommendations for intercity passenger service under the current environment. Part III was to have provided an evaluation and recommendations for intercity passenger service under a changed environment. Part IV was to have combined the prior three reports into a single comprehensive document.

At this time the Department has elected not to proceed with completing Part III and IV of the series due to 1) the National Railroad Passenger Corporation's (Amtrak) apparent improved stability and future survival prospects and 2) the Department's current funding authorization.

Thus, the findings and conclusions in Parts I and II do not reflect the entirety of the original scope of work.

California Passenger Study
Part II: Evaluation and Recommendations Under the Current Environment

Amtrak Continues to Operate

I. Executive Summary

This report examines options available to the State of California (hereinafter, “the State” or “California”) if it elected to contract out intercity passenger rail service in California to an entity other than the National Railroad Passenger Corporation (hereinafter, “NRPC” or "Amtrak"), assuming that Amtrak remains in existence as it exists today (hereafter “under current environment”).

While Amtrak is generally proficient at operating the California services, its operating skills and experience are not impossible to replicate. Commuter rail services and the nation’s 500-plus freight railroads, along with a wealth of passenger rail operations in other countries, give evidence that the key to operating a successful railroad operation is neither a secret nor a science. So, successful operation of California service is neither solely reliant upon Amtrak's experience nor operational competence.

However, Amtrak offers unique advantages to the delivery of intercity California services that no other interested contractor can exactly match. First and most importantly, Amtrak, under federal law, has the right to access freight railroad tracks at incremental costs. Other contractors would have to negotiate with freight railroads for access and the cost of access. Next, Amtrak owns and operates the equipment maintenance facility in Los Angeles where *Pacific Surfliner* equipment is serviced and enjoys a large ownership share of and will operate the new Oakland equipment maintenance facility where the *San Joaquin* and *Capitol* fleets will be maintained. Also, Amtrak owns the majority of the equipment used on the *Pacific Surfliner* Route.

In addition to access and equipment issues there are two other major constraints that argue in favor of continuing a bundled (single package) sole source contract between Amtrak and California. First, Amtrak provides liability coverage under its contract with California. This is particularly important since Section 895 of the California Government

Code and other State laws preclude the State from assuming the liability of others. In addition, the State must budget its liability cost each year and cannot agree to an open-ended payment commitment. Second, Amtrak pays one-third of the deficit of the *Pacific Surfliner* trains in recognition that three pairs of trains were a part of the Amtrak national system before California began supporting additional trains. It is likely that Amtrak would not continue to fund this portion of the *Surfliners* if the Route was not operated by Amtrak.

While none of those considerations poses an insurmountable barrier to changing California's service arrangements, together they constitute a significant operating and cost advantage to Amtrak's continued operation of the subject services. However, a competitive bid process on some ancillary services, such as food service and ticketing and reservations, might lead to cost savings and service improvement. Therefore, R.L. Banks & Associates, Inc. (RLBA) believes that California should continue a sole source contract with Amtrak on the core rail service. California could begin the process of competitively bidding some specific functions. However, RLBA cautions that the experience of other public agencies in California is that a period of eighteen to twenty-four months is required to properly pre-qualify bids, design a request for proposals (RFP), review and negotiate proposals and allow the successful bidder sufficient time to mobilize efficiently.

II. Contracting and Compensation Options

In reviewing the contracting out of one or more passenger rail service functions in the current environment, this report evaluates four procurement options, which are defined below. Advantages and disadvantages of each option are displayed in the matrix that follows the descriptions. Also three different compensation options are discussed.

Contracting Options

No Bid (continued sole source, all-inclusive contract with Amtrak)

The National Railroad Passenger Corporation (NRPC or Amtrak) indicates that a process similar to that experienced in California is the upcoming pattern with respect to all state-supported services. It will inform the states what their desired services would cost; the states can then accept or decline the offer. The arrangement has worked somewhat like this to date in California, with major exceptions such as Amtrak's capping of some expense categories at the insistence of the Department and Amtrak's (past) willingness to operate the full service package throughout the entire year instead of reducing service late in the fiscal year when it became apparent that operating costs were going to exceed the agreed maximum compensation to Amtrak. Under its current contracts with California, Amtrak continues to operate if costs are above estimates and Amtrak's current funding has not resulted in any change in this policy. Although proposals have been made to institute changes in Amtrak's funding and organization, the foreseeable future is that Amtrak will continue to negotiate with California in the same manner as it has in the past.

No Bid Core Functions; Bid Ancillary Services *(similar to no bid option but implement phased program to unbundle ancillary services)*

Under this option, the Department would continue to negotiate sole source contracts with Amtrak for core functions including train and station operations, and would seek competitive bids on specific ancillary functions that seem promising, for example food service, ticketing and reservations. The experience gained in bidding out ancillary functions would provide the Department with experience in integrating contractors into a seamless service and permit an evaluation as to whether a turnkey or multiple contracts would best meet California's requirements.

Bundled Bid Package (selected bidder to provide all services)

Under this arrangement, a package comprising all passenger rail functions would be put out to bid to potential operators, including Amtrak. The selected contractor would have the responsibility to perform all specified functions, with the State retaining or separately contracting out some specific activities (such as food supply and commissary operations) should it choose. *Metrolink*, at inception, chose this bidding option as have several other new-start commuter rail services.

Unbundled Bid Packages (selected bidder(s) to provide one or more functional *services under each contract awarded)*

In this option, the State (or other sponsoring agency) would group passenger rail functions into logical combinations, or single elements and solicit bids on each function or combination. This is analogous to *Metrolink's* current arrangement, wherein train operations, track maintenance, signal and communications maintenance and equipment maintenance all are separately procured while *Metrolink* itself manages other functions. The *Sounder* service in Washington contracts with the host railroad to provide maintenance-of-way and train operations but chose Amtrak as its equipment maintenance provider.

Compensation Options

In reviewing the contracting out of one or more passenger rail service functions under the current environment, this report evaluates three procurement options, which are defined below.

Fixed Price Option

Under this option the parties develop a precise and detailed definition of the service to be operated and negotiate a fixed price to supply the resources necessary to provide all services defined. "Fixed price" best describes the CCJPA's current arrangement with Amtrak. An advantage of the approach is that considerable certainty is provided to both the sponsoring agency and the operator. Under the arrangement, the sponsor would not share in any economies that the operator may implement but the operator has incentive to implement such economies which might be achieved both to increase its profit under the extant contract and in negotiating the next contract. This form of contract is relatively inflexible with respect to changed or additional services, which generally must be dealt with through a negotiated change order process. Therefore, the arrangement is better suited to mature operations where the necessary services may be

anticipated accurately and/or where contract term is short, allowing the service package to be redefined frequently. Short-term contracts also bring with them the associated disadvantage of requiring frequent and extensive commitment of negotiating time on the part of both the sponsor and the operator with a resultant increase in contract administration costs.

Cost-Plus Option

Under this option the sponsor agrees to reimburse the operator its actual, documented expenses plus an agreed-upon fee. The arrangement provides flexibility that readily allows service expansion or changes. However, it provides little incentive to the contractor to control its costs and consumes significant accounting and oversight resources in the preparation, review and auditing of the contractor's bills. The arrangement may be useful when a service is being implemented or is changing rapidly and, therefore, it is very difficult to anticipate the level and patterns of service that will be desired over the life of the contract. This option is similar to the State's agreement with Amtrak, except that Amtrak does not charge the State an additional fee, it only charges the State for actual costs.

Base Price Plus Fixed Unit Cost Option

Under this option the sponsor and operator agree upon a defined base service to be operated at a negotiated cost and also establish defined costs associated with operating additional service on a per unit basis. The unit basis of additional services can be defined on any basis such as per crew-start or per train-mile. Such an arrangement does not preclude the sponsor from contracting out with other entities for services not covered by the base contract such as a major equipment overhaul. The base price plus fixed unit cost option provides certainty to both the operator and the sponsor, which also enjoys reduced financial risk. The operator is motivated to find and enjoy the benefits of improved operating efficiencies. This form of contract may be a good fit where the desired service base can be anticipated and defined but where there is an expectation that new services may be needed within the contract term. The arrangement's flexibility also encourages short-term or experimental service offerings. The Southern California Regional Rail Authority (SCRRA) employs the base price plus fixed unit cost option in its contracts.

Table 1 which follows, summarizes the key advantages and disadvantages of the several procurement options.

Table 1
Contracting and Compensation Options:
Key Pros and Cons
Under Current Contracting Environment
Amtrak Continues To Operate

Procurement Option	Advantages	Disadvantages
No Bid: Continuation of current sole source, by all-inclusive Amtrak arrangement	• Amtrak provides access to tracks owned by freight railroads and public entities • Amtrak provides liability coverage • Amtrak provides equipment maintenance facilities • Amtrak provides most *Pacific Surfliner* equipment • Amtrak provides spare equipment to the *Pacific Surfliner* service and occasionally to the *San Joaquin* and *Capitol* services • Amtrak absorbs one-third of *Pacific Surfliner* deficit • Continuity • One entity is responsible for all aspects of the service • Short contract term	• No price competition • More difficult to customize services and functions
No Bid: Core Functions; Bid Ancillary Services	• Amtrak provides access to tracks owned by freight railroads and public entities • Amtrak provides liability coverage • Amtrak provides equipment maintenance facilities • Amtrak provides most *Pacific Surfliner* equipment • Amtrak provides spare equipment to the *Pacific Surfliner* service and occasionally to the *San Joaquin* and *Capitol* services • Amtrak absorbs one-third of *Pacific Surfliner* deficit • Continuity with respect to train operations • California is able to gain experience with contracting out • California has ability to tailor on-board and customer service to each service's local environment. • Short contract term	• No price competition on train operations • Multiple contracts to supervise and administer • Contractors might work at cross purposes • Amtrak not responsible for losses on ancillary services operated by others • State must supervise services not performed by Amtrak

Table 1
Contracting and Compensation Options:
Key Pros and Cons
Under Current Contracting Environment
Amtrak Continues To Operate
(continued)

Procurement Option	Advantages	Disadvantages
Bundled Bid Contract: Bidders compete for a single contract to perform all or most service functions (Amtrak could compete to be the contractor.)	• One entity is responsible for all/nearly all aspects of the service • Price and quality competition	If Amtrak not chosen, State or contractor must: • Arrange access to rail lines • Arrange commercial liability coverage • Secure *Pacific Surfliner* equipment or provide alternate equipment Obtain/build equipment maintenance and layover facilities
Unbundled Bid Contract: Some or all functions are put out to bid individually or grouped (Amtrak could be retained under an exclusive contract to perform some functions and could compete to provide some or all other functions.)	• Price and quality competition • Maximizes ability to customize service aspects • Attracts more bidders including those interested only in particular functions • Amtrak could be retained to provide functions in which it is best positioned • Other advantages depend upon what functions are bid and how they are bundled	State or contractor may have to: • arrange access to rail lines • arrange commercial liability coverage • provide most *Pacific Surfliner* equipment • obtain/build equipment maintenance and layover facilities Other disadvantages depend upon what functions are bid and how they are bundled
Compensation Options		
Fixed Price Option Cost of service is set in contract, continuation of present arrangement	• California knows cost of service in advance. • Protected from price increases during contract term. • Protected from service reductions to offset price increases	• Cost efficiencies retained by Amtrak • Service cannot be adjusted without renegotiating contract • Short-term contracts require increased administration
Cost-plus Option Operator reimbursed at its actual, documented expenses plus an agreed-upon fee	• Provides flexibility to adjust or expand service.	• Contractor has little incentive to control its costs. • Consumes additional accounting and administrative resources. • Costs of service can exceed available funds. • Service may have to be reduced if costs exceed available funds.

Table 1
Contracting and Compensation Options:
Key Pros and Cons
Under Current Contracting Environment
Amtrak Continues To Operate
(concluded)

Compensation Option	Advantages	Disadvantages
Base Price Plus Fixed Unit Cost Option Base service operated at a negotiated cost and cost of additional services quoted on a per unit basis.	• Cost of base service known in advance • Additional services can be added based on a pre-determined cost • Sponsor can seek competitive bids for services not included in base contract. • Operator enjoys benefits of improved operating efficiencies.	• Cost efficiencies retained by Amtrak • Service can only be adjusted by paying additional costs or renegotiating base service. • Short-term contracts require increased administration.

Source: RLBA.

Advantages Enjoyed By Amtrak

Evaluation of service options needs to consider the several advantages enjoyed by Amtrak in acting as California's intercity passenger rail service operator. Those advantages include but are not limited to: 1) Amtrak's ability to access rights-of-way and other fixed facilities owned by freight railroads; 2) Amtrak's ability to pay for that access on an incremental cost basis and 3) its system-wide risk management (liability) plan. Disadvantages may include overhead cost structure, bureaucracy, restrictive labor agreements and image. A negative impact might occur if there were significant changes in Amtrak's cost accounting practices methodology that negatively impacted the cost sharing arrangements with sponsoring entities such as the State of California. Although Amtrak did circulate the draft of such a proposal in December 2002 in a document entitled *Route Contribution Analysis: Preliminary Findings* (RCA), significant changes, such as those outlined in RCA, did not occur. It is likely that such changes would probably accompany a significant change in Amtrak's funding or a significant change to the environment in which Amtrak operates as a result of a change in law or Amtrak's mission. Neither Amtrak's funding for the current Federal Fiscal Year (FFY), FFY04, nor the amount sought by Amtrak in FFYO5 indicate that such a change is likely.

The existing relationship between the Department and Amtrak or any entity that would survive or replace Amtrak as the State's service operator merits consideration in shaping possible service options since California has partnered with Amtrak in developing the intercity passenger service. Besides Amtrak's unique ability to access the facilities of freight railroads at incremental cost and the service facilities that it already has in-place in California, there are several key considerations in evaluating service options in the current environment.

Liability

An important consideration is not only the State's inability to assume the liability of others under California law but the increasing cost of liability insurance even if such can be obtained. As part of the process of negotiating access to the facilities of the freight railroads, the freight railroads will seek the maximum amount of relief possible from liability.

Administration and Management

If a contractor other than Amtrak were selected, it would be necessary to create an administrative and management function at the agency/agencies to replace those functions now performed by Amtrak. It is assumed that the Department would continue to provide those functions which it presently provides such as oversight and technical assistance on a state wide basis.

Through its national office and regional headquarters Amtrak now provides management oversight, service planning, railroad coordination, quality control, engineering and centralized accounting. Although the Department provides personnel to oversee certain aspects of equipment maintenance, for example, Amtrak personnel regularly provide administrative and supervisory support as part of its day-to-day operations in a manner similar to the functions that CCJPA performs for the *Capitol Corridor* service. Absent the administrative oversight provided by Amtrak, the Department will have to be more deeply involved in such tasks as the reviews and audits of financial and performance reports, analyzing the adequacy of the risk management program, for example, and overseeing the customer service function on a more detailed level.

III. Issues Impacting Contracting Options

The functions performed by Amtrak in operating the three California services are standard elements of intercity passenger rail operations and all should be considered necessary. No Amtrak activities emerged as clearly not cost effective at this institutional-level analysis. Attention was focused on functions Amtrak would find difficult to provide in a cost-effective manner. Car cleaning has been contracted out by Amtrak at outlying locations. Similarly, commissary operations are contracted out as part of Amtrak's national commissary contract and specialty food items on the *San Joaquin* trains are prepared locally under a separate contract; thus Amtrak provides only the on-board component of food service.

At the institutional level, Amtrak is a nationwide organization operating various kinds of passenger rail services, so it is inevitable that many overhead costs must be allocated rather than directly measured. The Department has been working with Amtrak over the course of each contract renewal to ensure that the allocation to California services is fair and RLBA believes that it has been successful in that effort. For example, the Department and Amtrak have agreed to place a cap on the amount charged by Amtrak to take reservations. CCJPA and Amtrak have agreed that a portion of the incentive payment that may be earned by Amtrak operation of the *Capitols* is shared with the employees who work on the *Capitol* service.

However, RLBA also believes that introducing competition into the procurement process for specific ancillary functions, would possibly result in lower bids from bidders with different cost structures and might result in a lower bid from Amtrak as well as it was encouraged to develop more cost efficient ways of doing business. For instance, SCRRA is installing new vending machines to sell tickets to its Metrolink riders. The machines also will be able to sell tickets good on any train in the Amtrak system, illustrative of contracting out arrangements that could be applied to marketing, reservations and information, and equipment maintenance. The following task discussions examine the constraints, opportunities, advantages and disadvantages regarding potential competitive bidding options.

Amtrak's Advantages

Amtrak was created in 1971 pursuant to the Rail Passenger Service Act (RPSA) which in effect was Amtrak's charter, its backbone, and under which Amtrak was granted the right of access to tracks and facilities of the nation's freight railroads. Since operating money-losing passenger trains had caused the railroads such financial distress, the railroads were willing to permit Amtrak to access their tracks and facilities if it would provide the mechanism to eliminate freight railroad subsidy of revenue-losing passenger routes.

Under RPSA, Amtrak enjoys two advantages over other bidders who may desire to operate intercity passenger rail service. The advantages are:

- right of access to tracks and facilities of freight railroads and
- the right to access those facilities at incremental cost.

There are also constraints on competitive bidding as applied to intercity passenger rail service in California. The constraints are:

- limitations on the state's ability to assume the liability of others under state law and
- Amtrak's ownership of most locomotives and passenger cars used to operate the *Pacific Surfliner* service.

The constraints on competitive bidding resulting from Amtrak's ownership and lease of maintenance facilities, station and equipment are lessened under the provisions of the Consolidated Appropriations Act of 2004. The Consolidated Appropriations Act of 2004 permits states which sponsor passenger rail services, as is the case in California, to seek bids from other operators to offer the service so as to promote price and service competition. Where Amtrak's facilities and equipment are essential to operating the service and Amtrak is unwilling to make them available to another operator, Section 151 of the Consolidated Appropriations Act of 2004 requires the Secretary of Transportation to set the terms and conditions of their use by other parties. Although Section 151 provides a mechanism to obtaining access to Amtrak's facilities and equipment, it does not assure California that another State might not outbid it for Amtrak equipment nor does it require that the tracks owned by the freight railroads be made available to it.

Right of Access to Tracks and Facilities of Freight Railroads

Under RPSA, Amtrak enjoys the statutory right to access tracks and facilities of freight railroads. If Amtrak is to be replaced as the operator of the State's intercity passenger rail service, the Department or a new operator will have to reach agreement with Burlington Northern Santa Fe (BNSF), Union Pacific Railroad Company (UP), SCRRA and North County Transit Development Board (NCTD) to obtain track access, including all usual and difficult contract terms – compensation, scheduling, dispatching and liability. At present, Amtrak has the necessary contractual arrangements in-place and is the only passenger rail service entity in the U.S. with any rights to obtain access to freight railroad tracks notwithstanding a situation where the freight owner does not want a passenger operation instituted, increased or maintained. Selection of an alternative service option must consider that access, including the compensation to be paid to obtain that access, would have to be negotiated. The cost of access to a passenger rail operator other than Amtrak would be higher than the incremental cost now paid by Amtrak under its existing contracts pursuant to federal law.

In the case of the California passenger services we believe that both BNSF and UP would continue to permit the California intercity passenger services to operate. Based on our research, including our discussions with BNSF and UP, it is our expectation that both BNSF and UP would insist on negotiating track access fees and liability requirements directly with the Department as to the *Pacific Surfliner* and *San Joaquin* services and CCJPA and/or the Department with respect to the *Capitol Corridor* service. Both BNSF and UP expect to obtain higher access fees but declined to quote a cost of access.

Negotiations with those same parties as well as for-profit entities, such as Catellus Development Corporation would have to take place in order to secure access to stations. Amtrak also enjoys other advantages under Section 24308, which spells out other statutory rights enjoyed by Amtrak when operating over a host railroad's facilities, including such things as emergency operations, dispatch preference over freight transportation, accelerated speeds and additional frequencies.

State rail operators cannot use the power of eminent domain to gain access to facilities owned by freight railroads or other public entities. They must negotiate not only to achieve access but also over the fees and charges paid to obtain access. (It should also be mentioned that section 14039 of the California Government Code states that the

State ". . . shall have no authority to operate railroads" and thus, the Department only can contract out such services). And, finally, there is a cultural divide between passenger railroads and freight railroads that must be overcome to help achieve access. Experience has shown that access, at least to freight railroad facilities, has not been readily forthcoming.

In some cases, a negotiated solution may be superior to the mandated access provided under RPSA. Negotiated access offers the opportunity to enter into voluntary and potentially healthier relationship between California, the operator and the rail line owner. While a voluntarily, negotiated agreement may result in California paying more than incremental cost to access a freight line, it may result in improved access and performance that could more than offset the higher cost. Both BNSF and UP have taken the position that access to their tracks will be negotiated only with the service sponsor, the Department with respect to the *Pacific Surfliner* and *San Joaquin* services and the CCJPA or the Department regarding the *Capitols.*

Right to Access Facilities at Incremental Cost

RPSA provides Amtrak with the right to use the railroad facilities over which it operates at incremental or avoidable cost. Avoidable costs are those incremental costs above and in addition to base costs that otherwise would not be incurred except for the performance of the subject service. The provision was designed to prevent turning the major financial burden of operating passenger service which had been the responsibility of the railroad into a windfall, creating a new profit center at the railroads while, at the same time, providing relief from their existing burden.

RPSA subsequently was modified to provide that any payments above incremental cost must be based upon performance. This led to the introduction of performance incentives into Amtrak contracts with railroad track owners, first implemented in 1974 and materially modified in 1976-1977. Amtrak currently has incentive payment agreements with BNSF and UP that are valid in California. Performance payments provided the railroad freight industry with its first opportunity to earn a “profit” from hosting Amtrak operations but railroads had to work hard and be diligent to earn it. One former railroad president summed up the incentive potential by saying that everything his railroad earned in performance incentives was a contribution to its bottom line since the carrier would run the same number of passenger trains each year whether it earned nothing or millions of dollars in performance incentives.

Performance incentives are not without their critics who say "why pay the freight railroads for something they are legally obligated to do?" The answer is that absent incentives, good Amtrak train performance likely will not happen. Even with incentives, certain carriers place minimal emphasis on passenger train on-time performance, even though RPSA provides statutory preference to the movement of passenger trains over freight trains.

Service problems on the *Capitols*, in part, illustrate the failure of incentives to guarantee absolute priority of passenger operations as required by RPSA. However, the CCJPA has negotiated a new incentive contract with the UP based solely on performance on the Capitol Corridor. Previously the incentive contract covered the entire Amtrak system, and any positive performance on the Capitol Corridor was outweighed by poor performance on the rest of the system. This new incentive contract has the potential to be much more effective.

The best way to maximize the value received from incentive contracts is to have the incentive payment tied to a measure that directly measures extent to which the desired performance is attained. In the case of the freight railroads, the passenger service wants to stay as close as possible to the agreed upon train schedule for each service. Thus, incentives should be tied to the actual on-time performance obtained by each service.

Obtaining Use of Improvements Paid for in Part or Whole by California

Were it able to negotiate a satisfactory access agreement with largely freight railroad track owners, a new contractor would be able to make use of the State's investment in stations, track and signal improvements on the three state-supported routes. However, this would still not provide the State or its contractor with access to the equipment maintenance facility under construction in Oakland which will be jointly owned by the State and Amtrak and will be used to maintain equipment for the *San Joaquin* and *Capitol* services that are presently maintained in a facility leased by Amtrak from UP.

A similar situation obtains concerning shops, storage and service facilities in Los Angeles that are owned by Amtrak and are used to maintain the equipment deployed in *Pacific Surfliner* service. Furthermore, the equipment to run the *Pacific Surfliner* service affects any contracting process since Amtrak owns the preponderance of that equipment.

Section 151 of the Appropriations Act does provide California with the ability to obtain access to Amtrak's facilities and equipment. However, this is not an assurance that California will obtain access at a price that it is willing to pay or that another State might not outbid it for use of equipment provided by Amtrak such as the *Surfliner* equipment.

Limitation on California's Assumption of Liability

In the current environment, liability results in a key restraint on an operator other than Amtrak since Section 895 of the California Government Code, as well as other sections of the California law, preclude California from assuming the liability of others.

Liability always has been a significant area of concern and major point of negotiation between Amtrak and its freight railroad hosts. Originally, when Amtrak first started operating, freight railroads assumed the liability for passenger train operations in return for a percentage override. Shortly after Amtrak's inauguration, the industry negotiated a Liability Apportionment Agreement (LAA) with Amtrak. The LAA was a no-fault arrangement where each party took responsibility for its own employees and equipment and other risks. Freight railroads received a small payment for their residual risk. This system has been slightly modified over the years but has remained in place over the past 30 years. To a great extent, changing the concept has been a standoff between Amtrak and the industry for a long time but, most importantly, the system works. A total release from liability related to passenger services has been a major goal of freight railroad track owners at least since Amtrak’s creation. Introduction of an operator other than Amtrak likely will require extensive negotiation on the issue of liability.

Under the present contractual arrangement, Amtrak provides liability coverage under its nationwide insurance coverage. California is in compliance with its legal requirements since it is not assuming the liability of any other entity. The current arrangement also allows the State to budget the necessary funds to fund liability obligations since the Amtrak contract amount is fixed and there is no unforeseen liability. Any entity contracting with the State would have to provide: 1) insurance that does not result in California assuming the liability of others and 2) fixes the cost of indemnification or liability as a specific amount each year. Commuter service sponsors such as Altamount Commuter Express (ACE) and Metrolink have been able to obtain insurance coverage through combinations of self insurance and commercial coverage. CCJPA notes that it is empowered to assume liability.

Locomotives and Passenger Cars Used to Operate *Pacific Surfliner*

Although California provides two sets of passenger cars used in the *Pacific Surfliner* service, Amtrak provides most of the *Surfliners* service's passenger cars and all locomotives. Of the existing fleet of 50 *Pacific Surfliner* cars, 40 are owned by Amtrak. Amtrak also utilizes in the service other passenger cars which it owns. Currently, four Superliner cars are used as baggage cars while eleven Horizon and one Amfleet car are used in peak periods during the summer. In the current environment, it is reasonable to expect that a contractor other than Amtrak would have to provide the equipment that Amtrak now provides. Assuming the continued existence of Amtrak, Amtrak would be able to utilize its equipment now employed in the *Pacific Surfliner* service elsewhere on the system if it did not operate state-supported trains in California. With the exception of the Northeast Corridor (NEC) where the use of *Pacific Surfliner* equipment is likely limited by the existence of catenary, cars and locomotives now employed in *Pacific Surfliner* service could be used to expand an existing service or initiate a new service. Absent Amtrak's willingness to lease the equipment now used in *Pacific Surfliner* service to a competitor, the State would have to employ Section 151 of the Consolidated Appropriations Act of 2004 to obtain use of some or all of the *Surfliner* equipment or any potential contractor would need to obtain suitable replacement equipment to operate the service.

Summary

Under current conditions, potential operators, including public agencies, other than Amtrak, are subject to key disadvantages in the contracting process. In the current environment, a potential alternative contractor to Amtrak must negotiate individual and specific commercial agreements with the owners of a rail line, obtain equipment and provide acceptable liability coverage. This is similar to the situation which occurred at several new-start commuter operations around the country in recent years. California's objectives are to continue providing the current level of service while considering and possibly implementing contracting alternatives

Key Contracting Option Functional Area Advantages and Disadvantages

Many of the key advantages and disadvantages noted in Table 1 relate to specific operating functions. An explanation follows of what makes those functions key to making decisions about the procurement process.

Access: Access by state-supported passenger rail trains to tracks owned by freight railroads and public entities is provided through agreements between Amtrak and those entities. In the case of freight railroads, Amtrak's agreements are based upon rights given it by Congress under the RPSA. Amtrak received the right to access freight trackage on an incremental operating cost basis (although Amtrak must contribute to capital improvements necessary to accommodate its trains). No other entity enjoys a similar right, so Amtrak is the only entity that can force freight railroads to permit track use. Agencies that have negotiated access to freight tracks to implement commuter rail service generally have paid a "market rate," resulting in access fees higher than incremental cost.

Amtrak uses track carrying trains now operated by *Metrolink* and the *Coaster* (and owned by the surrounding counties) that was owned by freight railroads until the early 1990s. Amtrak's continued access to those tracks was in the Purchase and Sale Agreements negotiated between the then-owning freight railroads and the public purchasers. Although the State has no standing to assume or succeed to those access rights, RLBA believes that the counties that own track would permit the State or its selected contractor to use the trackage on reasonable terms. However, Amtrak now uses some public tracks on an incremental, rather than full-cost basis and other compensation terms might result were a different State operator selected. RLBA does not view access to public-owned track at Diridon Station in San Jose as an obstacle since it too should remain available to any State sponsored service operator.

Liability Coverage: Under the contracts which govern the three California services, Amtrak provides liability coverage. The indirect cost to California, over $7 million in calendar year 2002, is included in the budget agreed to between Amtrak and the Department with respect to operating the *Surfliners* and *San Joaquins* and between Amtrak and the CCJPA with respect to the *Capitols*. As previously discussed, Amtrak's access agreements with the railroads indemnify the railroads against consequences of their actions under most circumstances. (Exact contract language has been requested of Amtrak.) Such indemnification has been insisted upon by railroads allowing access to commuter rail operators and should be considered a likely requirement any railroad would impose on any passenger train operator. Such a provision when applied directly to the Department is counter to Section 895 of the California Government Code, making Amtrak's provision of that indemnification a key advantage. Any contractor stepping into Amtrak's shoes would have to propose a liability mechanism that would relieve California of all liability in return for payment of an

annual amount or premium to be agreed to, budgeted and paid each year. No residual liability could remain. As previously discussed the Department could obtain coverage through agencies authorized under the California government code to assume liability such as is CCJPA. The recommended solution would be to contract with a third party to assume the State's liability in return for payment of a fixed amount.

Equipment Maintenance Facilities: *Pacific Surfliner* equipment is maintained in Amtrak's Eighth Street Yard in Los Angeles. Although the State has funded some improvements there, it has no right to use or provide other entities access to the facility. *San Joaquin* and *Capitol* Corridor equipment is maintained at Amtrak's Oakland facility, leased from UP, and soon to be replaced by a new facility currently under construction. Although the State and Amtrak are jointly funding construction of the facility, Amtrak enjoys the right to operate the facility as long as it is meeting specified equipment performance standards. Thus the State or its new contractor would have to provide new maintenance facilities (which would be costly and difficult in terms of finding a satisfactory location), negotiate with Amtrak for use of Amtrak's facility or utilize the provisions of Appropriations Act. Reaching prior agreement with Amtrak would facilitate reaching an agreement with a contractor other than Amtrak and permit the Department to use the new Oakland facility if Amtrak were not the equipment maintenance contractor.

Equipment: The State provides 78 California Cars and 17 locomotives to the Northern California pool that supports both the Capitols and San Joaquins. Amtrak maintains this equipment under contract with the State. Amtrak provides 44 cars to the *Pacific Surfliner* service along with ten provided by the State. Amtrak provides all *Pacific Surfliner* locomotives and spare equipment and additional seasonal equipment supporting *Pacific Surfliner* trains. Amtrak also, at times, provides spare cars to *San Joaquin* and *Capitol* consists. The State or a new operator would have to replace the equipment now provided by Amtrak. The lead time required to construct new equipment is generally about two years. New equipment is not a necessity but it may be difficult to find sufficient, similar equipment available via lease to supply the *Pacific Surfliner* fleet, although short- or long-term lease of the present fleet from Amtrak should not be ruled out. However, Section 151 of the Consolidated Appropriations Act of 2004 could also be employed to either negotiate use of the *Pacific Surfliner* equipment or obtain rates for its use determined by the Secretary of Transportation.

Amtrak Funding of *Pacific Surfliner* Trains: Amtrak covers one-third of the *Pacific Surfliner* train deficit in recognition of the fact that three pairs of trains were a part of the Amtrak national system before California began supporting additional trains. The Amtrak contribution is on the order of $10 million per year. It is unlikely that Amtrak would continue to operate three *Surfliner*s if California selected another operator in that corridor. It is more likely that Amtrak would withdraw, leaving California to operate and fund the deficit generated by the operation of all *Pacific Surfliner* trains. Although Amtrak has discussed implementing costing principles that might require the Department to pay the for all the *Pacific Surfliner* trains, the present funding proposals passed by Congress do not indicate that such a practice is imminent.

Non-Key Contracting Option Functional Area Advantages and Disadvantages

There are several functions that do not lead to any party possessing a key advantage or disadvantage with respect to the contracting of intercity service but are of sufficient importance as to merit consideration and close examination as part of any contracting out process.

Equipment Maintenance, Turnaround Servicing and Cleaning: As has been discussed above, Amtrak performs equipment maintenance for the Northern California fleet in Oakland, and in Los Angeles for the Southern California fleet.

Amtrak currently performs turnaround servicing by utilizing a combination of Amtrak employees and contractors. At Los Angeles and Oakland, turnaround servicing and cleaning is performed by Amtrak employees at Amtrak's facilities. At outlying locations, turnaround servicing and cleaning of passenger car interiors is performed either by contractors or Amtrak employees. *Pacific Surfliners* receive additional servicing (passenger car debris pick-up and straightening of restrooms) by employees who ride *Pacific Surfliners* at intermediate points between Los Angeles and San Diego. Since the practice of utilizing contractors is already in-place, contracting is not viewed as a key advantage or disadvantage. Where turnaround cleaning is performed in conjunction with the servicing of equipment, the two activities need to be coordinated closely and might best be successfully and efficiently undertaken by the entity performing equipment maintenance.

Food and Beverage Service: Food and beverage service is provided on each intercity rail service by a combination of Amtrak and contract employees. The on-board service personnel are Amtrak employees who receive their food and beverage stock from a contractor, Gate Gourmet, which operates commissary facilities at Los Angeles and Oakland as part of its national contract with Amtrak. The Los Angeles commissary facility is owned by Amtrak while the Oakland commissary facility is located in a UP owned building, part of which is leased by Amtrak. Gate Gourmet purchases prepared food and food supplies from outside vendors and assembles the food and supplies to be used on the trains. No food preparation is done in the commissary facilities.

Since Amtrak presently contracts out food commissary activities, it should not be difficult for the Department to contract out their operation in the future. The present interface between on-board personnel, who are Amtrak employees, and Gate Gourmet's employees seems to work and there is no reason to believe that it would not in the future under any foreseeable contract arrangement. Amtrak indicated that it would not favor the use of non-Amtrak employees to provide the on-board services. However, over time, it might be possible to negotiate an agreement that permits the use of non-Amtrak employees to perform the on-board food service function.

In both Oakland and Los Angeles, an independent food commissary contractor would have to provide its own facility or arrange for the use of Amtrak facilities. It may be possible to utilize Section 151of the Consolidated Appropriations Act to gain the use of Amtrak facilities. Amtrak will construct a new commissary facility in Oakland located next to the new maintenance facility. Construction is planned to start in the fall of 2004 and be completed in the winter of 2005. The new facility will replace the current inadequate facility that is housed in part of a UP building that Amtrak leases.

If either train operations or the food and beverage service component of train operations on the *San Joaquin or Capitols* services were to be contracted out, it would be necessary to reach agreement with Amtrak on use of its commissary facility at Oakland. Although it would be possible to utilize Section 151 of the Consolidated Appropriations Act of 2004 to gain use of Amtrak's commissary facility in Oakland, it may not be available. Amtrak leases a portion of the building in which the commissary is housed from UP and might decide to give-up its lease since the only train that Amtrak would then service at Oakland would be the California Zephyr. The California Zephyr's requirements could be met by a contractor with its own facilities and UP, which has

expressed a desire to have Amtrak move out of the building, would most likely not be inclined to lease it to the State.

Stations and Station Staffing: With the exception of the Emeryville station, which Amtrak is purchasing under a lease-purchase arrangement, Amtrak accesses the stations that it serves through leases with the owners. Where a station is served by both California intercity trains and Amtrak's long distance trains, the cost of station operations is apportioned based on ridership. Station personnel are Amtrak employees.

At stations that are staffed at any given time by a single employee, that employee performs all necessary functions such as ticketing, baggage checking, if available, and general cleaning of the station area that may be Amtrak's responsibility under the lease. At stations staffed at any given time by two or more employees, the employees can have duties that are specifically designated such as ticket agent and baggage clerk. There is no reason to believe that contracting out of station services to an entity other than Amtrak could not be accomplished if so desired.

Obtaining access to stations should not be a major impediment to service if station operations were contracted out. In some instances, such as the agreement between Catellus Development Corporation covering Amtrak's use of Los Angeles Union Station, a new arrangement might have to be renegotiated but that should be feasible. If Amtrak continues to operate long-haul trains in California but does not operate the California services, agreements would have to be negotiated for both joint use of those stations shared stations and any employee sharing arrangement. If Amtrak and the contract operator were unable to reach agreement as to use of the facility by the contractor, California could ask the Secretary of Transportation to set terms and conditions for its use. Although access to the stations is available through the Consolidated Appropriations Act of 2004, it is not assured that Amtrak will continue to operate manned stations if they do not operate the California sponsored services. In such an instance, Amtrak may find it more cost effective to operate unmanned stations or stations with limited hours of staffing for its long distance trains.

Connecting Bus Operations

The extensive connecting bus system which complements and supplements each of the three intercity rail services is currently contracted out by Amtrak based upon specifications developed by the Department and the CCJPA. Since the bus program is currently contracted out, it should not be difficult to continue to have the bus service operated by an organization under contract to the rail service operator, subject to specifications developed by the Department and the CCJPA.

Ticketing and Reservations

Amtrak provides all ticketing and reservation functions. If agreement between a new operator and Amtrak could not be reached on ticketing and reservations, on either a short term or long term basis, then the Secretary of Transportation could be asked to set terms and conditions. Alternatively, the contract operator could seek to establish a new ticketing system based upon vending machines. SCRRA is already implementing a vending machine ticketing program that will also sell Amtrak tickets. The Department or successful contractor could negotiate to do this for the new service. Information services could be handled by initiating a new program building upon an existing public information service. CCJPA believes that it could utilize the existing customer services operated by the Bay Area Rapid Transit District (Bart).

Dispatching

Amtrak performs no dispatching function of its own thus offering neither advantage or disadvantage. A new operator would have to negotiate agreements with the previously cited owners of the track. This would best be accomplished as part of the negotiation of contracts permitting track access.

IV. Full Costs and Benefits of Each Potential Contracting Option Under the Current Environment

Based on the assumption that intercity rail service continues to exist and be provided in the current environment, California could expect to pay higher costs for core operations service were it to contract with any entity other than Amtrak. Although it was not possible to obtain contracts that would permit an exact estimate of increased costs that might be expected, RLBA estimated the effect of operator substitution on total costs. Those functions whose costs in the current environment most likely would be impacted by the selection of an operator other than Amtrak are shown in Table 2.

Table 2
Functions Impacted by a Change in Intercity Rail Service Operator
Assuming Continuation of the Current Environment

Function	Impact of Contracting Out
Access to Tracks	Cost increases above incremental cost
Liability Coverage	Insurance costs increases
Equipment Maintenance and Layover Facilities	Must buy out or lease Amtrak facility at Oakland and must construct facility in San Diego and/or construct or lease Los Angeles
Equipment	Must purchase or lease *Pacific Surfliner* equipment owned by Amtrak or equivalent
Amtrak Funding of *Pacific Surfliner* Deficit	Must fund Amtrak's portion of the *Pacific Surfliner* deficit

Source: RLBA.

Access to Tracks

As previously discussed, Amtrak utilizes the tracks of host railroads or those owned by public agencies, based upon the incremental cost to the host railroad of maintaining the track for use by Amtrak. Although not all parties were willing to provide RLBA the contracts and specific amounts paid by Amtrak *to* access trackage, RLBA was able to estimate the amount paid by Amtrak in performance incentives and to achieve track access in California during the FFY ending October 2002. RLBA estimates this amount to be over $9 million. Thus, RLBA would expect the amount to increase by at least a

factor of three to five if the Department or another party had to negotiate access rights. For instance, the San Joaquin Regional Rail Commission (SJRRC) currently pays UP $6.14 per train mile to operate the ACE service over UP's track. Both SJRRC and UP acknowledge that the track access paid to UP will rise when renegotiation of the existing contract is completed. Employing a conservative track access fee of $7 train mile would yield an annual track access fee of approximately $26 million based on the nearly 3.7 million train miles run by the State supported trains. It should be noted that this amount excludes performance payments, compensation related to depreciation of the track structure and contributions to capital projects that both freight railroads, BNSF and UP, have said would be included in negotiating access with an entity other than Amtrak.

Liability Coverage

The current indirect cost to the State of liability coverage now provided under the Amtrak contract now exceeds $7 million. In the event Amtrak were replaced as operator of State-supported intercity trains, that amount would increase significantly since: 1) at least the railroads (and perhaps selected public agency track owners) would insist that they be relieved of liability beyond that now included under their agreements with Amtrak and 2) the State is prohibited from assuming the liability of other entities. A theme, repeated throughout the interviews of railroad and California agency staff that RLBA conducted, was that liability costs have doubled and tripled. RLBA would expect the cost of liability insurance to increase at least by $7 to $14 million for the same level of coverage if it were independently obtained outside the Amtrak contract.

By way of illustration, ACE pays approximately $1 million per year for $100 million in commercial coverage, excluding a $1 million deductible that ACE budgets each year. The ACE service produces approximately 130,000 train miles on an annual basis as compared to the 3.7 million train miles run by State supported trains. Although the setting of insurance rates is not directly based on train service, RLBA believes that it will be difficult for California to obtain insurance coverage in the market place below the $7 to $14 million estimated increase. Insurance costs will certainly be higher for new operators who are operating in a corridor for the first time.

Equipment Maintenance and Layover Facilities

An area of critical importance is the need to have the necessary facilities to maintain equipment used in the consists of the subject trains. At the present time, the facility in Los Angeles is owned by Amtrak and the facility under construction in Oakland, although jointly owned by Amtrak and the Department, is controlled by Amtrak while the Department has no absolute right to use it.

Since Amtrak's facility in Los Angeles is used by Amtrak to service equipment on its long-distance trains in addition to the *Surfliners*, it is unlikely that the facility could be purchased from Amtrak and alternative arrangements would have to be negotiated with other parties. Although there is the ability to do some turnaround servicing and maintenance activities at other facilities in the Los Angeles area, it is clear that there is not sufficient capacity in that metropolitan region to do all the work that would be required to maintain *Pacific* Surfliner service at its current level.

Although the maintenance facility under construction in Oakland is jointly owned by Amtrak and the Department, the Department only has a right of first refusal to purchase the facility at fair market value (FMV) if Amtrak desires to sell it. Based upon Amtrak's cost to purchase the land and its share of the cost to construct the facility, a reasonable estimate of the FMV of its share would be in the range of $30 to $40 million.

Alternatively, the use of these facilities could be accomplished either by negotiating a lease with Amtrak or by the California utilizing Section 151 of the Consolidated Appropriations Act of 2004 to have the Secretary set terms and conditions. However, there is no assurance that the terms set by the Secretary will be favorable to the Department or accomplished within a time frame that permits uninterrupted service.

Equipment

Other than the two sets of passenger cars used in the *Pacific Surfliner* service that California provides, Amtrak supplies most of the passenger cars and all the locomotives used by the *Surfliner*s. Were Amtrak no longer the operator of the *Pacific Surfliner* service, Amtrak likely would reposition the *Pacific Surfliner* equipment to another service which it was operating. An order of magnitude cost estimate to replace the equipment could approach $80 to $100 million, assuming the purchase of six equipment sets, including spares at a purchase price of $14 million per train set, the purchase price of new equipment specified in the *California Passenger Rail System, 20 Year*

Improvement Plan Final Report of March 2001. RLBA does not believe that any coaches used in commuter rail service around the US would prove satisfactory to employ on any of the State-supported trains while Amtrak would have every incentive to redeploy equipment now dedicated to California services to other routes or sell it to other operators. Acquisition of Amtrak's California service locomotives also would be problematic.

As is the case with facilities, use of the equipment could be accomplished either by negotiating a lease with Amtrak or by California utilizing Section 151 of the Consolidated Appropriations Act of 2004 to have the Secretary set terms and conditions. But again, there is no assurance that the terms set by the Secretary will be favorable to the Department or accomplished within a time frame that permits uninterrupted service. Also, there is also the possibility that Amtrak would be able to demonstrate a higher and better use for the equipment on another service that it operates or that another State sponsored service might be willing to pay a higher rate in order to obtain use of the equipment.

Amtrak Funding of *Pacific Surfliner* Deficit

Under the agreement between California and Amtrak, Amtrak absorbs one-third of the *Pacific Surfliner* deficit which results in an Amtrak contribution estimated to be on the order of $10 million per year. The absorption recognizes that the *Surfliners* previously operated as part of Amtrak's national system prior to California's expansion of the service. Were Amtrak no longer the operator, California would have to cover the deficit from its own funds or reduce service levels.

V. Recommended Contracting Options

Under the current environment, the preferred contracting option is to negotiate a sole source contract with Amtrak for the actual cost for core functions, including train and service operations, plus separately stated costs for specific ancillary functions. This option is recommended since it permits California to seek bids on those ancillary functions which can be bid readily as separate functions. As experience is gained, additional contract items can be identified, unbundled and contracted out separately. Since California would not want to interrupt or lessen the services that it is already offering, this contracting approach would permit development of an RFP and evaluation of bids to provide ancillary functions. Thus, it is the RLBA Team's recommendation that the Department continue to negotiate a sole source contract with Amtrak for the core California functions at actual costs, and then to unbundle specific items and initiate competitively bid contract(s) on food service, maintenance of equipment, and passenger information and reservations. Additional functions that might be unbundled are listed in Chapter III and include: stations and station staffing, and connecting bus operations.

The contracting arrangement described above provides a good fit where the desired service base is known and there is an expectation that ancillary services may be contracted out separately within the contract term. The arrangement's flexibility also encourages short-term or experimental service offerings, a potential benefit to both negotiating parties. Contract terms for ancillary services will need to be of a sufficient duration to attract bidders and allow the recovery of start-up and capital costs incurred by bidders. Multi-year contracts should be flexible enough to permit adding, eliminating or changing services without undue administrative burden. California should be prepared to sign contracts of five to seven years duration with options in the event California elects to renew the contract in one-year increments up to a total contract term of not more than ten years.

Food Service

Food service represents a component of rail service that is very visible to the public and has a large affect on perceived service quality, and yet is relatively easily segregated from the basic rail operations. This makes it a good candidate for early unbundling and competitive procurement. Primary objectives of that procurement would be to improve customer satisfaction with menu, quality and availability of food selections and to enable

flexibility and responsiveness in terms of trying new menu items or making seasonal or other menu changes.

As an initial step, the Department should negotiate with Amtrak to obtain the ability to contract out food commissary operations to a vendor of the Department's choosing. That step may require that Amtrak negotiate amendments to its contract with its present commissary vendor, which is a national contract. The Department, CCJPA or other service sponsor would contract directly with a food service vendor without Amtrak's participation, although coordination with Amtrak would be required. Any contractor selected by the Department must be able to provide the necessary facilities or reach agreement with Amtrak and UP in Oakland and with Amtrak in Los Angeles, to use existing facilities. Amtrak would continue to provide the on-board food service personnel.

Equipment Maintenance

The second area to be examined is the maintenance of equipment function as it relates to the *San Joaquin* and *Capitol* services. Since the equipment supporting those services is owned by the Department, it may be possible to obtain efficiencies if a suitable maintenance facility can be obtained either by leasing or purchasing Amtrak's interest in the facility that is presently under construction in Oakland or awarding maintenance to a contractor who can provide such a facility. As with food service, the service sponsor (the Department, CCJPA or other) would contract and deal directly with the maintenance provider and would coordinate with Amtrak. This would enable the sponsor to establish and change maintenance standards as deemed appropriate to provide for the most efficient upkeep of the equipment and attainment of high standards of availability and passenger satisfaction. Since the Department has the option to assume the maintenance function should Amtrak fail to achieve certain performance standards, examining contracting options in this manner could serve as a contingency plan should Amtrak fail to meet required performance standards.

Passenger Information and Reservations

Passenger information and reservations is a third area that should be considered as having the potential to be contracted out. At present, reservations are required on all *San Joaquin* trains, business class on the *Surfliners* and all trains on both services during the Thanksgiving holiday period to assure that each passenger may enjoy a seat.

As presently applied, the reservation policies are probably wise but it may be possible to provide an enhanced service through a contractor at less cost than Amtrak currently charges. For example, CCJPA may be able to solicit a vendor to provide information and ticketing service for the *Capitols* at a cost equal to or less than the amount Amtrak presently charges. As other service providers develop the ability to sell the tickets of providers through their machines, such as *Metrolink* is presently doing with its ability to sell Amtrak tickets, alternative information and ticketing arrangements will be more readily available. An alternative information and ticketing arrangement on the *Capitols* would be a good first step in examining the functional area.

VI. Lessons Learned from Other Rail Services

Contracting out the operation of intercity passenger rail service has been undertaken in recent years in the international arena. In the United States contracting out of passenger rail service has been limited to the commuter rail services.

Contract Packaging – International Experiences

International experience provides some insights into the contracting out process; it is discussed below.

Australia

In the state of Victoria, Australia split its networks into "competing" franchises that were, in fact, in separate geographic areas and did not compete for customers; they only competed on the basis of key performance indicators of interest to the government. The unfortunate result was the creation of smaller franchises that were more vulnerable to failure than larger franchises would have been. The state government is now running the former National Express franchises (a suburban train franchisee) while negotiating with the other suburban train franchisee, Connex, and tram franchisee, Yarra Trams (Transdev), to take over the systems previously franchised to National Express. If negotiations are unsuccessful, there may be further public franchise tenders.

Germany

The privatization process in Germany is being conducted somewhat slowly and deliberately, it is still on-going and is in a relatively early stage. Consequently, the lessons learned in Germany are preliminary. However, the lessons learned to-date specifically regarding franchises that have been let in Schleswig – Holstein, relate primarily to contracting strategy.

Currently, few independent companies are operating services. Local governments run the majority, with subsidies provided by the federal government. The local operations deploy leaner staff structures that are considerably more efficient and cost effective than Deutsche Bahn Aktiengesellschaft (DB AG), the monopoly organization they replaced. Although the local operations allow greater flexibility in the tailoring of services (both to meet the needs of passengers and freight), the implementation of new services and initiatives proceeds at a slower pace than that which experience indicates private enterprise is capable.

Based on this experience, the contracting strategy should have been designed to attract greater private sector interest, with the intent of further increasing efficiency and reducing dependence on federal subsidies. Specifically, and subject to further study due to the preliminary nature of the privatization experience in Germany, to date:

- profit incentives must be designed to be adequate to attract private sector investment and
- competition with local government agencies can be perceived as unfair by private contractors.

Great Britain

The lessons learned in the UK primarily relate to contract packaging, contracting strategy/coordination and increased costs. Since a large number of contracts were let, there were significant transaction costs associated with the multiple contracts. In addition, each contracting organization involved needed not only to make a profit but also was required to fund its own insurance and each party took its own view as to how the rates it charged would allow it to meet profit goals and minimize the risk of failing to meet profit goals and failing to fund insurance needs. In the end such costs currently more than outweighed efficiency gains. In addition, a number of contracting strategy elements were not fully developed, which led to difficulties defining responsibility and driving forward improvements in safety, performance and efficiency.

Political pressures resulted in the process being rushed through, creating many areas of conflict. Crucially, the framework and contracts adopted resulted in a number of incompatible goals and, as a result, Railtrack (the property company formed to conduct plant maintenance, plan the timetable and operate the signaling and control centers that were formerly the responsibility of British Rail (BR)) and the several franchisees did not work towards a common goal. This created a number of difficulties, of which some were short term and resolved themselves organically, whereas others were long term and, in some cases, became harder to resolve with the passage of time.

There were also some short-term conflicts that partially resolved themselves over time, though not without cost that might have been avoided with better planning. A significant example of this was the decision that Railtrack outsource all maintenance and rehabilitation activity. This led to the creation of new companies that secured long term

maintenance and renewal contracts with Railtrack only to then find themselves unable to secure employees with the essential skills. Those resources were often obtained using Railtrack staff and several different companies providing similar services with differing requirements. As a result of using numerous entities - Railtrack staff and multiple contractors - to do perform similar tasks, costs escalated alarmingly. The situation was made worse by poor planning in the implementation of rehabilitation and improvements to the physical structure which resulted in poor utilization of the physical plant and yielded increased operating and capital costs. Railroads operate as a system and the failure to properly integrate the separately contracted functions contributed to the problem of escalating costs.

Contract Packaging – California Experiences

In the United States experience with contracting out rail passenger service is limited to commuter operations. During the study, the RLBA Team interviewed Amtrak and freight railroad officials, union officers, the Department staff and California commuter rail service sponsors and operators. These interviews provided information not only about the different ways in which contracting for rail passenger service has been accomplished in California but information on other aspects of rail passenger service in California. Appendix A lists in alphabetical order by organization and interviewee the officials of the various entities who were interviewed during the course of the study.

ACE is sponsored by the SJRRC and operated by Herzog under a contract between the two parties. Herzog operates trains over right-of-way owned by UP, and maintains the equipment.

NCTD, sponsor of the *Coaster* commuter service in San Diego, and the Peninsula Corridor Joint Powers Board, sponsor of the *Peninsula Commute Service* (Caltrain), both contract individually with Amtrak to provide a “turnkey” operation which means that Amtrak maintains the track and equipment as well as operates the trains.

SCRRA, sponsor of *Metrolink* commuter service in the Los Angeles basin, originally contracted with Amtrak to operate trains, maintain equipment and perform the dispatching function over tracks owned by SCRRA and freight railroads and contracted with Herzog to maintain the publicly-owned tracks. As the capabilities of SCRRA's staff expanded and the SCRRA organization gained experience, SCRRA utilized multiple contractors and brought the dispatching function in-house. SCRRA now contracts with

Amtrak to operates the trains, Bombardier to maintain the equipment and Herzog to maintain SCRRA's tracks.

The sponsoring organizations generally contract for an initial period of five (5) years and usually include an option for the agency to renew the contract for two or three additional years. Contractors generally prefer contract periods of seven to ten years so that the contractor is better able recoup the costs of proposal preparation, mobilization, training and up-front costs such as obtaining working capital. Other than in an emergency situation, it is reasonable to expect that the length of time required from the start of developing an RFP to issuing notice to proceed (NTP) to the successful bidder would be at least 18 months as applied to California's intercity passenger services.

Specifically, the lessons to be learned are to:

- Allow sufficient time to plan the contracting strategy to avoid conflicts. A longer timeframe allows many contracting issues to be resolved prior to the RFP being let as opposed to being resolved during negotiations, and allows the contracting negotiation effort to be coordinated towards achieving service goals.

- Establish clear definitions of responsibility limits concerning all parties involved. This increases the level of safe operation, efficiency and reduces costs. An example from Britain illustrates the consequences where responsibility limits were inadequately defined, Railtrack's contract assigned it all MOW responsibility throughout the former BR system, but did not originally require it to properly consider its customers' needs – meaning the needs of the train operating companies, which led to cost increases and redundant resource uses, which may well have contributed to accidents. Such requirements, obligations and responsibilities subsequently have been clarified and should be an integral part of privatization contracts.

- When contracting out on a competitively bid basis the term of the contract should have an initial term of five to seven years and be renewable at the contracting agency's option for an additional term given satisfactory performance by the contractor.

- Turn-key contracts may provide the best option for the initial contract and contracting-out by function may be more appropriate as experience is gained. At each contract renewal point, the sponsoring agency should evaluate the advantages of turnkey versus multiple contracts.

- Incentive payments should not only be tied to controlling costs but include service goals and customer satisfaction as significant components.

Appendix A
Organizations and Individuals Interviewed

Organization	Interviewees
The Burlington Northern and Santa Fe Railway Company (BNSF)	DJ Mitchell, II, Assistant Vice President Passenger Operations
Capitol Corridor Joint Powers Authority (CCJPA)	Eugene K. Skoropowski, AIA, Managing Director David B. Kutrosky, Deputy Director Finance and Planning
Gate Gourmet	George Padilla, Contract Manager
National Railroad Passenger Corporation (Amtrak or NRPC)	Todd H. Almilli, Manager, Terminal Services Lynn Berberian, Superintendent Passenger Services Southwest Division L.J. Commer, District Superintendent Bay District, Pacific Division Darrell E. Johnson, Director Business and Strategic Planning Dennis M. Kuklis, Senior Director Planning and Business Development Richard Phelps, General Superintendent Southwest Division Jack Wilson, Assistant Superintendent Road Operations
North County Transit District (NCTD/Coaster)	Edward Kasparik Manager of Commuter Rail Services Karen H. King, Executive Director Thomas Lichterman, Director Transportation Services Walt Stringer, Manager of Light Rail
San Diego Association of Governments (SANDAG)	Linda Culp, Senior Transportation Planner
San Joaquin Regional Rail Commission (SJRRC/ACE)	Stacey Mortensen, Executive Director
San Mateo County Transit District (SMCTD)	Ian B. McAvoy, Deputy Chief of Development
Southern California Regional Rail Authority (SCRRA or Metrolink)	Chick Aday, Facilities and Fleet Maintenance Manager Gary L. Lettengarver, Superintendent-Dispatching David R. Solow, Chief Executive Officer

Appendix A
Organizations and Individuals Interviewed
(concluded)

Organization	Interviewees
State of California Department of Transportation, Legal (Caltrans)	William Basset (by phone)
State of California Department of Transportation, Mass Transportation Program (Caltrans)	James Ogbonna, Chief Reverse Commute Branch
State of California Department of Transportation, Division of Rail (Caltrans)	Lee Belton, Rail Transportation Associate Clem Bomar, Chief Office of Rail Equipment and Rail Construction William D. Bronte, Chief Office of Rail Capital Project Development, Operations and Marketing Emily Burstein, Rail Transportation Associate Judy Cleveland, Chief Capital Projects North Lee F. Hower, Rail Transportation Associate Patrick Merrill, Manager Capital Projects, South Matt Paul, Chief Office of Planning and Policy Warren Weber, Division Chief
Union Pacific Railroad Company (UP)	Jerry Wilmoth, General Manager Network Infrastructure
United Transportation Union (UTU)	J.P. Jones, Executive Director California State Legislative Board
U.S. Department of Transportation, Federal Railroad Administration (FRA)	Peter M. Montague, Senior Economist
Ventura County Transportation Commission (VCTC)	Ginger Gherardi, Executive Director Mary Travis, Manager Rail Programs

Appendix B

Comments Received On The California Passenger Study

A draft of Part I and Part II of the California Passenger Study was sent to a number of interested stakeholders from the public and private sectors. Comments on the report were received only from Mr. David B. Kutrosky, Deputy Director, Finance and Planning of the Capitol Corridor Joint Powers Authority (CCJPA) and Mr. David R. Solow, Chief Executive Officer of Southern California Regional Rail Authority (SCRRA or Metrolink). The comments are appended in this report as Appendix B. The changes suggested by Mr. Kutrosky have been incorporated into the final report.

Southern California Regional Rail Authority
700 South Flower Street, 26th Floor
Los Angeles, California 90017-4101

August 2, 2004

Warren Weber
Chief, Division of Rail
Department of Transportation
P. O. Box 942874-MS74
Sacramento, CA 94274-0001

Dear Warren:

Thank you for the opportunity to comment on the draft report by R. L. Banks and Associates, Inc. Within the "box" in which the analysis was done, I think they did a comprehensive, albeit conservative, risk adverse analysis. I have comments on that analysis and additional comments which might be considered tangential to the Part II Banks analysis or a subject of the next phases of the study if that were to be initiated. These comments are mine alone and not representing a position of this Agency or its Board.

Comments on the R. L. Banks Study on Evaluation and Recommendations for Intercity Passenger Service Under the Current Environment

Using the five major subject areas identified in the study, my comments are as follows:

1) Access Rights/Incremental Costs

The study correctly identifies the unique access rights and incremental costs rights that Amtrak enjoys. With the narrow analysis of the intercity service only, it is correct to assume independent negotiations by a third party contractor will lead to higher operating costs. In the Pacific Surfliner Corridor, though, there are two mitigating facts which will substantially influence the situation.

First, 65% of the primary corridor, Santa Barbara to San Diego, is in public ownership. The State has a unique ability, if it wishes, to negotiate for access rights in a framework which may include for the public agencies, as an alternative, contributions to capital maintenance costs or capacity projects. The State, in this unique role, could act for a third party vs. that party attempting to negotiate without the influence of the State's resources.

Second, the Department of Transportation has responsibilities much greater than those managed by the Division of Rail. The Pacific Surfliner Corridor not only provides both intercity and commuter passenger service, but this corridor is also critical in

goods movement in the six-county Southern California area. The two major freight carriers may have interests beyond the passenger corridors. The State, in its role as encouraging mobility, regulating air quality issues and advocating for congestion relief, may be able to package its future interregional investment decisions to take advantage of the railroads capacity requirements. This may, in turn, lead to a "package" of agreements which could include additional cost effective passenger rail access by a third party that the State chooses.

The point is that the State with its substantial resources could, overtime, assist a third party to gain access at reasonable costs, if the department more broadly defined its role in rail issues.

2) Ownership of M of E Facilities

Again, the Banks report looks at a snapshot in time when examining M of E facilities. To date, it is correct to assume that Metrolink could not service the Pacific Surfliner fleet and accommodate its current fleet and expected growth. The State knows, through its district offices, that Metrolink is examining possible construction of an Eastern Area Maintenance Facility which, by design, will re-balance fleet maintenance requirements since 2/3rd of the Metrolink fleet is in the Inland Empire overnight. This will impact Metrolink's utilization of its Central Maintenance Facility (CMF).While there will continue to be heavy peak times for the CMF under any circumstances, it would be incorrect without further analysis to assume Metrolink could not maintain the Pacific Surfliner fleet, especially overnight in LA sets, since the CMF is essentially empty at that time. There is also the possibility of the State leasing a portion of the 8th street facility from Amtrak under the terms and conditions of the Consolidated Appropriations Act of 2004 (more on that later).

3) Ownership of Equipment

The study concentrated on the obvious fact that a substantial amount of the Pacific Surfliner equipment is owned by Amtrak. I assume, subject to certain funding source restrictions, the allocation decision was made by Caltrans to concentrate the state-owned fleet in the Northern California corridors. That creates a different situation in Southern California then the other two State-supported corridors. However, in the past (and I do not have current information), the State has paid for the Amtrak equipment through a depreciation/interest charge. Those funds, which currently go to Amtrak, could under alternative scenarios be used to provide the funding for a third party to purchase equipment and lease it back to the State. Obviously, the current depreciation/interest charge would have to be analyzed to see whether it could finance replacement equipment or whether other legal restrictions apply.

4) Liability Coverage

The restrictions under which the State cannot assume liability of others is similar to the Joint Powers Agreement terms that Metrolink has with its member agencies. The five-county member agencies accept no liability for the actions of Metrolink, their only responsibility is to pay an allocated share of premiums and to annually fund a self-insured reserve.

As a point of comparison utilizing FY 02/03 data, Metrolink operated 38% more train miles and almost double the passenger miles of that of the Pacific Surfliner service. Utilizing the data in the Banks report, in FY 02/03, the State contributed $6.1 million for premiums and liability coverage for this service. While not a direct comparison, for FY 04/05 (two fiscal years later), SCRRA will pay $5.66 million for operating liability and property insurance including contributions to refund its SIR, while operating substantially more service on a passenger mile and train mile basis (the latter two sectors often are utilized, in part, to determine premium amounts). There may be some economics of scale as well as the ability to not be tied to Amtrak's national claims history, which could be advantageous. Caveats, though are important. By SCRRA not controlling or auditing any of the Amtrak service, a combined insurance program may be problematic.

5) Amtrak Provision of Deficit Funding

The $10 million a year Amtrak contributions to the Pacific Surfliner corridor is a significant issue which influences contracting options for this corridor vs. that of the other two State-supported corridors. As you know, in the past two appropriations cycles, the FRA has been granted greater review and control over Amtrak's funding, in essence creating a grantor/grantee relationship which did not previously exist. It is not inconceivable (but very much dependent on the fall election), that future appropriations could be directly granted to the State vs. through Amtrak, allowing the State to control who receives federal funding for intercity service. The current Administration position, would though likely condition such a grant on the assumption that operating funds would decline overtime, but may allow a replacement through which federal capital or rehabilitation funds might keep the State "whole".

Lastly, the study makes certain assumptions about the flexibility granted by the Consolidated Appropriations Act of 2004. It dismisses that flexibility based on the assumption that a fair and reasonable agreement may not be reached and Amtrak can move their equipment elsewhere. If that language remains in future acts and the Administration does not change in the November elections, the political reality is that Administration appointees will control the Amtrak Board. Given the USDOT's past position, it might be more likely that the Secretary may be able to substantially influence a facility and equipment agreement which works to the State's favor.

Warren Weber
August 2, 2004

Future Analysis

Part III of the Banks analysis, if it were to move forward, would be to look at intercity service in a "changed environment." Some of the issues raised above might be more appropriately addressed in that context.

As you know, back in 1998 the Southern California Intercity Rail Group (since disbanded) chose not to pursue takeover of the San Diego service, pursuant to State Senate Bill 457. Since that time, Metrolink, Amtrak and Caltrans have pursued numerous fare integration efforts, most notably the Rail 2 Rail program. SCRRA recently initiated an effort, to look at schedule coordination along Amtrak Intercity, Metrolink and Coaster services. As you know, we also have embarked on a joint ticket vending machine program which will eventually permit "through" ticketing on both Metrolink and Amtrak services. We, in essence, have maximized our ability to integrate services, within the "current" environment as envisioned by Part II of your study. I would hope we could jointly develop a scope for phase III which, among its options, re-examines the Pacific Surfliner Corridor as a Senate Bill 457 candidate, and possibly looks at combined oversight of the commuter and intercity programs in Southern California which may permit greater levels of integration.

Thank you once again for the opportunity to comment on the Banks report. I look forward to a continuing dialogue on this important issue.

Sincerely,

David Solow
Chief Executive Officer

DS:d

From: David B. Kutrosky
To: Matt Paul, Emily Burstein
Date: 08/11/2004
Subject: Comments on RL Banks

Provided below are the CCJPA's comments on the referenced study.

General
- overall the studies are well-written, easy to follow

- the concepts are easily presented and thorough explained

- the international experiences provide basic details; yet may be difficult to correlate to CA study due to differing political and institutional structures

Specific-1st Study
- on p. 32 please reference the other CCJPA agreements: Renegotiated Maintenance Transfer Agreement (RMTA) and Equipment Lease.

- on p. 38, 2nd line under "Dispatching" needs "are required" between "Amtrak" and "given".

- p. 38 at the end of 2nd paragraph under "Dispatching" please add the sentence "Amtrak continues to calculate the on-time performance and makes payments to UP on behalf of the CCJPA."

- p. 38 the 3rd paragraph is difficult to follow/understand; may need to rewrite it.

- on p. 39, 2nd sentence of 3rd paragraph under "Liability" needs "of Amtrak-operated passenger trains" line under" between "accidents" and "are".

- p. 46, in the 4th sentence of the 1st paragraph of "Organizational Structures" please add "renovation/overhaul" after "oversight of equipment maintenance".

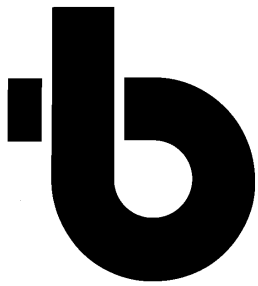
- p. 48, we can provide any additional info to complete Table 7 per footnote a.

Specific-2nd Study
- p. 4, does Caltrans have a "Fixed Price Option" or "Cost-Plus Option" with Amtrak?

- p. 12, very interesting point on Section 151 of the Consolidated Appropriations Act of 2004 and access to Amtrak facilities such as the new Oakland Maintenance Facility.

Please contact me with any questions or comments.

David B. Kutrosky
CCJPA



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